

***United States Court of Appeals
for the Second Circuit***



APPENDIX

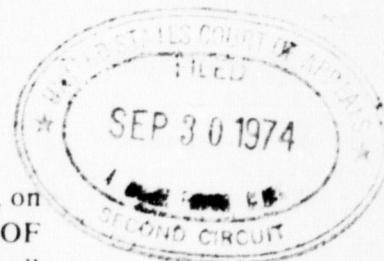
74-2001

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B P/s

United States Court of Appeals

For The Second Circuit



L. JOHN JACOBI and ROBERT GAMBERA, individually, on behalf of the members of the AMERICAN ASSOCIATION OF SECURITIES REPRESENTATIVES, and on behalf of all other securities representatives similarly situated,

Plaintiffs-Appellants,

vs.

BACHE & CO., INC.; WALSTON & CO., INC.; THOMSON & McKINNON AUCHINCLOSS, INC. (formerly THOMSON & McKINNON, INC.); HORNBLOWER-WEEKS, HEMPHILL, NOYES; LOEB, RHOADES & COMPANY; TUCKER, ANTHONY & R. L. DAY; HARRIS, UPHAM & CO., INC.; DOMINICK INT'L. CORP.; HALLE & STIEGLITZ, INC.; GOODBODY & CO., INC.; BEAR, STEARNS & CO.; LEHMAN BROS.; KIDDER PEABODY & CO., INC.; R. W. PRESSPRICH & CO., INC.; DEAN WITTER & CO., INC.; W. E. HUTTON; REYNOLDS & CO.; PAINE, WEBBER, JACKSON & CURTIS; SCHEINMAN, HOCKSTIN & TROTTA, INC.; PRESSMAN FROLICH & FROST, INC.; NEWBURGER, LOEB & CO.; RAUSCHER, PIERCE SECURITIES CORP.; OPPENHEIMER & CO.; STEINER ROUSE & CO., INC.; L. F. ROTHSCHILD & CO.; SPENCER TRASK & CO.; SMITH BARNEY & CO., INC.; and THE NEW YORK STOCK EXCHANGE, INC.

Defendants-Respondents.

JOINT APPENDIX

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(Continued on next page)

5

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tion is referred to RYAN, J. with his consent for all purposes. Edelstein, Ch.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

70 CIV. 3152

JUDGE WAR

Pltffs. 7-23-70

No. 105 Rev.

TITLE OF CASE

CLASS ACTION

ATTORNEYS

For plaintiff:

ended to read: L. JOHN JACOBI and EUGENE GEISZ, etc. :
 ONDRA, President of the AMERICAN
 LATION OF SECURITIES REPRESENTATIVES,
 idually, and on behalf of all members
 e AMERICAN ASSOCIATION OF SECURITIES
 REPRESENTATIVES, and on behalf of all other
 ns and future securities representa-
 similarly situated,

Plaintiffs,

-against-

CO., INC.; WALSTON & CO., INC.;
 LINTON & CO., INC.; THOMSON McWHIRION
 INLOSS, INC. (formerly THOMSON &
 INCH, INC.); HORNBLOWER-WEEKS, HENPHILL,
 S; ROEH, RUGADES & COMPANY; TUCKER,
 ONY & M.L. WY; BLAIR & CO., INC.;
 W. & CO., INC.; DOMINICK & LOMBARD, INC.;
 ESON HAMMILL & CO.; HALL & STIEGLITS;
 S. BROTHERS & CO.; EMMETTES TEGLEN & CO.;
 W. & CO.; WILLIAM R. STANTS, INC.;
 W. & CO.; GOODBODY & CO.;
 E. & CO.; SHIELDS & CO.;
 E. & CO.; LIDDER BRADY & CO., INC.;
 MASSFICK & CO., INC.; STONE & WEBSTER;
 BATES CORP.; THE FIRST BOSTON CORP.;
 WITTER & CO.; W.E. HUTTON; A.C. BELL;
 NS, INC.; REYNOLDS & CO.; PAINE, WEBBER,
 SON & CURTIS; SCHEINMAN, HOCKSTIN &
 CO., INC.; PRESSMAN FRONLICH & FROST, INC.;
 S. & BOYCE, INC.; NEYBURGER, LOEB &
 SCHUCHER, PIERCE SECURITIES CORP.;
 EMMER & CO.; SPANER HOUSE & CO., INC.;
 EIGHTH L & CO.; SPENCER TRASK & CO.;
 COCHY & CO., INC.;
 E. & CO.; THE ASSOCIATION
 OF AMERICAN FINANCIAL FIRMS AND THE NEW YORK
 OF AMERICAN,

Defendants.

ABRAHAM E. FREEDMAN
 36 Seventh Ave., NYC, NY 10011

CHAPIN & PIATTAU
 Ave. N.Y. (deft Shearson Hamill &
 ABBOTT & MORGAN

Manhattan Plaza (deft Walston &
 Hrvic Brothers)

HEIMER & UNTERMYER (deft Oppenheimer
 re St. N.Y. 10005 (Hirsch & Co.

AND HILL
 11 St. N.Y. 10005 (Reynolds & Co.)

defendant:

SPEAR AND HILL (Reynolds & Co.)
 63 Wall St.
 New York 10005

12-30-70 - SULLIVAN & CROWELL
 46 Wall St., NYC 5

Freeman & Bogue (for Hornblower, and
 Paine, Webber, Jackson, etc.)
 Hanover Square, NY 10004

EFORD WOODY CARTER & HAYS
 2 Wall St.
 New York 10005 (deft Harris Upham &

NAME OR
 RECEIPT NO.

REC.

DISB.

Witness fees

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vll Docket Continuation

Sheet #1

2A

PROCEEDINGS
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Judgment Not

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DENEY BALLANTINE BUSBY PALMER & WOOD-(deft-Shields & Co.)

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80 Pine St. NY 10005 WH 4-7400 Loeb Rhoades & Co.)

WEIL, GOTSHAL & MANGES-(deft-Dempsey Tepler & Co.)

767-Fifth Ave., NY 10022 PL 8-7800

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1 Chase Manhattan Plaza, NY 10005 HA 2-6262

J. ELLIOTT P. YOUNG-(deft-dupont Glove Forgan, Inc. and for F.I. duPont

344-2000 (Glove Forgan & Co.)

Docket Entries

34

L. John Jacobi, etal

vs. Bache & Co., etal

70 Civ 3152

Rev. Civil Docket Continuation

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PROCEEDINGS

Date Order
JudgmentFor Defendants Contd:

BAER & MARKS (deft H. Hentz & Co.)
 70 Pine St. NY 10005 422-4910
~~347 N. 4th St~~ (deft Dominick & Dominick) Subs. JOHN F WALSH
~~39 Broad St. NY 10004~~ 349-2200 230 Park Ave NYC 10017
 MOSES & SINGER (deft L.F. Rothschild & Co.)
 51 West 51st St. NY 10019 LT 1-9000
 SHEARMAN & STERLING (deft W.E. Hutton & Co.)
 53 Wall St. NY 10005 483-1000
 HALL, MCNICOL, MARETT & HAMILTON (deft Thompson & McKinnon Auchincloss)
 41 East 42nd St. NY MU 2-3060
 BEEKMAN & BOGUE (deft Hornblower & Weeks-Hemphill-deft Paine,
 5 Hanover Square, NY 10004 HA 2-4060 (Webber, Jackson & Curtis)
 * Sullivan & Cromwell (Dominick & Dominick) Subst. 5/6/74.
 46 Wall St., NYC 10005

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70 CIVIL 315

5A

Rev. Civil Docket Continuation

E	PROCEEDINGS	Date Order Judgment N
7-71	Filed ANSWER of Paine Webber Jackson & Curtis to amended complaint.	B&B
7-71	Filed ANSWER of Hornblower & Weeks-Hemphill, Noyes to amended complaint.	B&B
7-71	Filed ANSWER of Thomson & McKinnon Auchincloss Inc. to amended complaint.	FT&H
7-71	Filed ANSWER of W.E. Hutton & Co. to amended complaint.	S&S
7-71	Filed ANSWER of L.F. Rothschild & Co. to amended complaint.	M&S
7-71	Filed ANSWER of Halle & Stieglitz, Inc. to amended complaint.	GRE III
7-71	Filed ANSWER of Dominick & Dominick, Inc. to amended complaint.	M&W
7-71	Filed ANSWER of Goodbody & Co. to amended complaint.	C&W
7-71	Filed ANSWER of H. Hentz & Co. to amended complaint.	B&M
7-71	Filed ANSWER of E.I. duPont, Glare Forgan & Co. to amended complaint.	LPY
7-71	Filed ANSWER of duPont Glare Forgan Inc. to amended complaint.	LPY
7-71	Filed ANSWER of A.G. Edwards & Sons, Inc. to amended complaint.	ILLI&M
7-71	Filed ANSWER of Pressman, Frchlich & Frost Inc. to amended complaint.	EMT&B
7-71	Filed ANSWER of Steiner, House & Co. Inc. to amended complaint.	NL
7-71	Filed ANSWER of Scheinman, Hochstin & Trotta, Inc. to amended complaint.	P&O
7-71	Filed ANSWER of deft. New York Stock Exchange to amended complaint.	NTH&M
7-71	Filed ANSWER of Dempsey Tegeler & Co. Inc. to amended complaint.	W&M
7-71	Filed ANSWER of Loeb, Rhoades & Co. to amended complaint.	CCSR&O
7-71	Filed ANSWER of E.F. Hutton & Co. Inc. to amended complaint.	CCSR&O
7-71	Filed ANSWER of Spencer Trask & Co. Inc. to amended complaint.	ENG
7-71	Filed ANSWER of Tucker, Anthony & R.L. Day to amended complaint.	ST&B
7-71	Filed ANSWER of Lehman Brothers Inc. to amended complaint.	ST&B
7-71	Filed ANSWER of Merrill Lynch to amended complaint.	BWFC&I
8-71	Filed Affidavit of Service of one copy each of answers listed above.	
8-71	Filed Notice of Deposition and issued subpoena.	
9-71	Filed ANSWER of deft. Association of Stock Exchange Firms to amended complaint.	R&M
9-71	Filed stipulation and order extending deft. Stone & Webster Securities Corp.'s time to answer complaint to 2/10/71. So ordered. Bryan, J.	
11-71	Filed Plaintiffs' Interrogs. to Deft. Bache & Co. Inc.	
11-71	" " Walston & Co. Inc.	
11-71	" " E. F. Hutton & Co. Inc.	
11-71	" " Thomson & McKinnon Auchincloss, Inc.	
11-71	" " Hornblower & Weeks-Hemphill, Noyes.	
11-71	" " Loeb, Rhoades & Co.	
11-71	" " Tucker, Anthony & R. L. Day.	
11-71	" " Blair & Co. Inc.	
11-71	" " H. Hentz & Co. Inc.	
11-71	" " Delafield & Delafield.	
11-71	" " Harris, Upham & Co. Inc.	
11-71	" " Dominick & Dominick, Inc.	
11-71	" " Shearson, Hammill & Co. Inc.	
11-71	" " Halle & Stieglitz, Inc.	
11-71	" " Orvis Brothers & Co.	
11-71	" " F.I. duPont, Glare Forgan & Co.	
11-71	" " duPont Glare Forgan, Inc.	
11-71	" " Dempsey, Tegeler & Co. Inc.	
11-71	" " Goodbody & Co.	
11-71	" " Hirsch & Co.	
11-71	" " Bear, Stearns & Co.	
11-71	" " Shields & Co.	
11-71	" " Lehman Brothers Inc.	
11-71	" " Kidder, Peabody & Co. Inc.	
11-71	" " R. W. Pressprich & Co. Inc.	
11-71	" " Stone & Webster Securities Corp.	

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PROCEEDINGS

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Date Order
Judgment No

Filed Plaintiffs' Interrogs. to The First Boston Corp.

" " Dean Witter & Co. Inc.

" " W. E. Hutton & Co.

" " A. G. Edwards & Sons, Inc.

" " Reynolds & Co.

" " Paine, Webber, Jackson & Curtis.

" " Scheinman, Hochstin & Trotta, Inc.

" " Pressman, Frohlich & Frost Inc.

" " Newburger, Loeb & Co.

" " Rauscher Pierce Securities Corp.

" " Steiner, House & Co. Inc.

" " Oppenheimer & Co.

" " L. F. Rothschild & Co.

" " Spencer Trask & Co. Inc.

" " Smith, Barney & Co. Inc.

" " Merrill, Lynch, Pierce, Fenner & Smith.

Filed stipulation and order adjourning oral examinations of pltfs. L. John Jacobi and Eugene Geisz to 3/10/71, and extending pltfs. time to move pur. to Rule 11A to 3/31/71. So ordered. Wyatt, J.

Filed stipulation and order extending deft. A. G. Edwards & Sons, Inc.'s time to answer or object to interrogs. to 3/30/71. So ordered. Bousal, J.

Filed Answers of deft. Dominick & Dominic, Inc. to pltfs' Interrogs.

Filed Answers and Objections of deft. Halle & Stieglitz, Inc. to Interrogs.

Filed Answers of Steiner, House & Co. Inc. to Plaintiffs' Interrogatories.

Filed Deft. Reynolds & Co.'s Answers and Objections to Interrogatories.

Filed Answers of Scheinman, Hochstin & Trotta, Inc. to Pltfs' Interrogs.

Filed Defendant Shearson, Hamill & Co. Inc.'s Answers and/or objections to Plaintiffs' Interrogatories.

Filed Deft. Spencer Trask & Co. Inc.'s Objections to Pltfs' Interrogatories.

Filed Deft. Spencer Trask & Co. Inc.'s Answers to Plaintiffs' Interrogatories.

Filed Answers of deft. Hirsch & Co. to Pltfs' Interrogatories.

Filed Answers of Deft. Oppenheimer & Co. to Pltfs' Interrogatories.

Filed Response of Deft. W.E. Hutton & Co. to Pltfs' Interrogatories.

Filed Deft. Demosey-Tegeler & Co. Inc.'s Answers and Objections to Pltfs' Interrogs.

Filed Answers and Objections to Pltfs' Interrogs. by deft. R. J. Presaprieh & Co. Inc.

Filed Answers and Objections to Pltfs' Interrogs. by deft. Bear, Stearns & Co.

Filed Affidavit of Service of Answers and Objections, by mail.

Filed Affidavit of Service of Answers and Objections, by mail.

Filed stipulation and order extending defts. Shields & Co. time to object to interrogatories to 4/5/71. So ordered. Bousal, J.

Filed stipulation and order extending deft. E. F. Hutton & Co. Inc.'s time to answer or object to interrogatories to 4/15/71.

Filed stipulation and order extending deft. Loeb, Rhoades & Co.'s time to answer or object to interrogatories to 4/15/71. So ordered. Bousal, J.

Filed Answers to interrogatories (of deft. Harris, Upham & Co. Inc.)

Filed stipulation and order extending deft. Harris, Upham & Co. Inc.'s time to answer Interrogatories to 3/22/71. So ordered. Cannella, J.

Filed Deft. Newburger, Loeb & Co. Inc.'s Answers and Objections to Plaintiffs' Interrogatories.

Filed Response of Deft. Walton & Co. Inc. to Pltfs' Interrogs.

Filed Response of deft. Crvis Brothers & Co. in liquidation, to Pltfs' Interrogs.

Filed stipulation and order extending defts. Bache & Co. Inc., Ricker, Peabody & Co., Inc., The First Boston Corp., Dean Witter & Co. Inc. and Smith, Barney & Co. Inc.'s time to answer or object to pltfs' Interrogs. to 3/31/71. So ordered. Cannella, J.

PROCEEDINGS

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Date Ord
Judgment

71 Filed Notice of Motion re: Amend Complaint. Ret. 4/27/71. (by plaintiff).

71 Filed Plaintiffs' Brief in support of motion under Rules 15 and 23.

71 Filed Answers of Paine, Webber, Jackson & Curtis, Inc. to Pltfs' Interrogs.

71 Filed consent and order substituting Brown, Wood, Fuller Caldwell & Ivey as attys. for Goodbody & Co. in place and stead of Cl re & Whitehead. So ordered. Metzner, J.

71 Filed ANSWERS AND OBJECTIONS OF DEFT. BACHE & CO. INC. TO PLTFS'. INTERROGS.

71 Filed Answers and Objections of Deft. Dean Witter & Co. Inc. to Pltfs' Interrogs.

71 Filed Answers and Objections of Deft. Smith, Barney & Co. Inc. to Pltfs' Interrogs.

71 Filed Answers and Objections of deft. Kidder, Peabody & Co. Inc. to Pltfs' Interrogs.

71 Filed Answers of Deft. A.G. Edwards & Sons, Inc. to Interrogatories of Plaintiffs.

71 Filed Answers of Hornblower & Weeks-Hemphill, Noyes to Pltfs' Interrogatories.

71 Filed stipulation and order extending deft. Shields & Co.'s time to answer or object to interrogatories to 5/5/71. So ordered. Metzner, J.

-71 Filed Answers and Objections of deft. The First Boston Corp. to Pltfs' Interrogs.

71 Filed Answers and Objections to Pltfs' Interrogatories to E.F. Hutton & Co. Inc.

71 Filed Answers and Objections to Pltfs' Interrogatories to Loeb, Rhoades & Co.

-71 Filed stipulation and order granting pltfs' motion to amend complaint; adjourning pltfs' motion for determination of class action; defts. agree to serve all papers before 5/24/71. So ordered. Motley, J.

71 Filed Answers and Objections to Interrogatories of deft. Lehman Brothers.

71 Filed Answers and Objections to Interrogs. of deft. Tucker, Anthony & R.L. Day.

71 Filed AMENDED ANSWER of deft. Lehman Brothers to amended complaint.

-71 Filed stipulation and order that deft. Lehman Brothers may serve and file its amended answer in the form submitted. So ordered. Motley, J.

-71 Filed Notice of Motion re: Dismiss Complt. as to 1st, 2nd & 3rd claims (by defts. Walston & Co. Inc. and Orvis Brothers & Co.)

-71 Filed Defendants' Memorandum in opposition to motion for class action determination.

-71 Filed stipulation adjourning motion now ret. 6/1/71 to 6/22/71.

71 Filed ANSWERS of Goodbody & Co. and Objections to Pltfs' Interrogatories by Defendant Goodbody & Co.

71 Filed stipulation adjourning motion now ret. 6/8/71 to 6/22/71.

71 Filed Deft. F.I. duPont, Coors Forgan & Co.'s Answers and Objections to Pltfs' Interrogs.

71 Filed deft. duPont Glove Forgan Inc.'s Answers and Objections to Pltfs' Interrogs.

71 Filed summons with marshal's ret. Served Walston & Co. Inc. by Mr. Baer on 8-3-70

Served E.F. Hutton & Co. Inc. by Miss Mitterdorf on 8-5-70

Served Thompson McKernan & Anchincloss Inc. by Mr. Bartlett on 8-5-70

Served Hornblower Weeks Hemphill Noyes by Mr. J. Torney on 8-5-70

Served Loeb Rhoades & Co. by Mr. Hans A. Widemann on 8-3-70

Served Tucker Anthony & R.L. Day by Mr. Macdon on 8-6-70

Served Pltfs & Co. by Mr. Saks on 7-22-70

Served defts & Co. by Mr. Miller on 8-3-70

Served Deafield & Deafield by Mr. Boyce on 8-6-70

Served Harris Uphan & Co. Inc. by Mr. Smith on 8-5-70

Served Donaldick & Donaldick Inc. by Mr. Walsh on 8-3-70

Served Shawson Hamall & Co. Inc. by Miss Dugan on 8-3-70

Served Halls & Stierlitz by Mr. Grand on 8-3-70

Served Orvis Brothers & Co. by Mr. Kilduff on 7-29-70

Served Danisoy Tealer & Co. Inc. by Mr. Fitzgerald on 2-3-70

Served Glove Forgan William K. Staats Inc. by Mr. Schein on 8-3-70

Served Francis I. Duncat & Co. by Mr. Coatsley on 8-3-70

Served Goodbody & Co. by Mr. Wellborn on 7-27-70

ST&S

E&M

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Date Order
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- Served Hirsch & Co. by Mr. Kohns on 7-29-70
- Served Bear Stearns & Co. by Mr. Hyman on 8-3-70
- Served Shields & Co. by Mr. Auer on 8-3-70
- Served Lehman Brothers by Mr. Loamis on 8-4-70
- Served Kidder Peabody & Co. by Mr. Lorgaker on 7-29-70
- Served R.W. Pressprich & Co. Inc. by Halpern on 8-4-70
- Served Stone & Webster Securities Corp. by Mr. Marion on 7-29-70
- Served First Boston Corp. by Mr. Kirkpatrick on 7-29-70
- Served Dean Witter & Co. by Mr. Caputo on 8-3-70
- Served A.G. Edwards & Sons Inc. by Mr. Calabro on 8-5-70
- Served Paine Webber Jackson & Certas by Mr. Gail on 8-6-70
- Served Rauscher Pierce Securities Corp. by Mr. Laros on 8-4-70
- Served Steiner Rose & Co. by Mr. Mirabella on 8-4-70
- Served Oppenheimer & Co. by Mr. Weinberg on 8-5-70
- Served Rothschild & Co. by Mr. Bloom on 8-4-70
- Served Spencer Trask & Co. by Mr. Growney on 7-29-70
- Served Sutin Barney & Co. Inc. by Mr. Latchford on 7-29-70
- Served Merrill Lynch Pierce Fenner & Smith Inc. by Mr. Curran on 8-4-70
- Served Association of Stock Exchange Firms by Mr. Barly on 8-6-70
- Served New York Stock Exchange by Mr. Gerald on 8-3-70
- 71 Filed Order that action is discontinued without prejudice & without costs on behalf of plttf. Eugene Geisz. Ryan, J.
- 71 Filed order that Robert Gambera is granted leave to intervene as a party plttf. & plttf's are granted leave to file a second, amended complaint. ACTION is discontinued without prejudice & without costs as to deft's Shields & Co. & the First Boston, Corp. Ryan, J. Mailed notice.
- 71 Filed memo-Endorsed on deft's motion filed 5-24-71 dismiss complaint: This motion has become moot by my order permitting the service of a further amended complaint. It is marked withdrawn. So ordered. Ryan, J.
- 71 Filed memo-endorsed on plttf's motion filed 3-31-71-Class action: Plttf's motion for leave to serve an amended complaint is granted. It will drop Eugene Geisz as a named plttf. & it will leave L. John Jacobel & Robert Gambera as the only named plttf's & the representatives of the class. The amended complaint drops, three deft's to wit, Blair & Co, Shields & Co, The first Boston, Corp are dropped as party deft's, as to them this action is discontinued without prejudice & without costs. Ryan, J.
- 71 Filed order that this action is conditionally determined to be a class action, members of said class are all securities representatives & that a notice in the form annexed hereto, shall be published as indicated, with an affidavit of publication & said notice shall be distributed to each member of the class by November 16, 1971. Ryan, J.
- 71 Filed deft's motion to take deposition of Alvin Miller on 10-26-71.
- 71 Filed ANSWER of deft. Paine, Webber, Jackson & Curtis, to second, amended complaint.
- 71 Filed ANSWER of Horshover, Wachs to second amended complaint.
- 71 Filed ANSWER of deft. Dominick & Dominick to second amended complaint.
- 71 Filed ANSWER of deft. Loro, Rhodes & Co.
- 71 Filed ANSWER of deft. R.W. Pressprich & Co. to second amended, complaint.

WSPER.

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Date Order
Judgment N

- 71 Filed ANSWER of deft. Bear, Stearns & Co. to second amended complaint. WSP&F
- 71 Filed ANSWER of E.H. Hutton & Co. CGSR&C
- 71 Filed ANSWER of deft. L.F. Rothschild & Co. to second amended complaint. M&S
- 71 Filed ANSWER of deft. Oppenheimer & Co. to second amended complaint. C&U.
- 71 Filed ANSWER of deft. Hirsch & Co. to second amended complaint. C&U.
- 71 Filed ANSWER of deft. Pressman, Frohlich to second amended complaint. BMT&I
- 71 Filed stip & order that deft's N.Y. Stock Exchange & Spencer Trask, must answer with respect to second amended complaint is ext. from 10-22-71 to 11-19-71. So ordered. Gurfein, J.
- 71 Filed stip & order that time of deft. Stone & Webster to answer the second amended complaint is ext. from 10-22-71 to 11-22-71. So ordered. Gurfein, J.
- 71 Filed stip & order that time for deft's Merrill Lynch to answer, second amended complaint is ext. until 11-5-71. So ordered. Gurfein, J.
- 71 Filed stip & order that time for deft's Lehman Bros. & Tucker, A. & R.L. Day may answer amended complaint is ext. from 10-22-71 to 12-1-71. So ordered. Gurfein, J.
- 71 Filed ANSWER of deft. W.E. Hutton & Co. to second amended complaint. S&S.
- 71 Filed ANSWER of deft. Smith, Barney & Co. " " " " S&C.
- 71 Filed ANSWER of deft. Bache & Co. " " " " " "
- 71 Filed ANSWER of deft. Kidder, Peabody & Co. " " " " " "
- 71 Filed ANSWER of deft. H. Hentz & Co. " " " " B&M.
- 71 Filed ANSWER of deft. Dean Witter & Co. " " " " S&C.
- 71 Filed ANSWER of deft. Association of Stock Exchange Firms to second, amended complaint.
- 71 Filed ANSWER of deft. Thomson & McKinnon Auchincloss to second amended, complaint.
- 71 Filed ANSWER of deft. Shearson, Hammill & Co. to second amended, complaint.
- 71 Filed Order: Deft. Merrill Lynch, having moved this court for an order, vacating a prior order dated 10-13-71 by Hon Sylvester J. Ryan, is hereby vacated, Ryan, J.
- 71 Filed Order that pursuant to rule 23(c)(1) this action is conditionally, determined to be a class action. Ordered that a notice, in the form, annexed hereto shall be published by the plaintiff's in a two-column, form, once in the national edition of the WALL STREET JOURNAL, & once in THE NEW YORK LAW JOURNAL, shall be made on or before, December 7, 1971, as indicated. Ryan, J.
- 71 Filed deft's (Merrill Lynch) affidavit & show cause order-enter judgment, ret. in Rm. 1105 on 11-11-71
- 71 Filed deft's (Merrill Lynch) memorandum of law in support of show, cause order.
- 71 Filed deposition of Alvin Miller taken by deft. (Merrill Lynch) on Oct. 26-71. Mailed notice.
- 71 Filed ANSWER of deft. F.I. duPont. G.P.T.
- 71 Filed stip & order that time of deft. Harris Upham & Co. to answer, 2nd amended complaint is ext. from 10-22-71 to 11-22-71. So ordered. Brieant, J.
- 71 Filed stip & order that time of deft. Deepsey-Tegular to answer 2nd, amended complaint is ext. from 10-22-71 to 11-22-71. So ordered. Brieant, J.
- 71 Filed stip and order that the time for deft. Steiner, Rouse & Co. to answer the second amended complaint is extended to 11-22-71. Brieant, J.

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Date:
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- 71 Filed ANSWER of deft. Orvis Bros. & Co. to second amended complaint. BA&M
- 71 Filed ANSWER of deft. Walston & Co. to second amended complaint.
- 71 Filed deft's (Harris Upham & Co.) notice to take deposition of the ,
Pltff Robert Gambera on 11-19-71.
- 71 Filed consent order that the motion, for an order amending this Court's
prior order dtd. 10-13-71, etc., is withdrawn and that this action
is discontinued without prejudice as to defts. Merrill, Lynch,
Pierce, Fenner & Smith, Inc., Delafield & Delafield, E.F. Hutton
& Co., Glore Forgan & Co., Francis I. duPont & Co., and A.G.
Edwards & Son, Inc., --Ryan, J.
- 71 Filed memo-endorsed on show cause order filed 11-3-71: After argument
& hearing this motion is granted on consent. An appropriate,
order has been submitted by the parties & it has been signed &
filed. Ryan, J.
- 71 Filed stip & order that deft's N.Y. Stock Exchange & Spencer Trask,
must answer to the second amended complaint is ext. from 11-19-71,
to 11-29-71. So ordered. Bonsal, J.
- 71 Filed ANSWER to second amended complaint by deft. Goodbody & Co. B&M
- 71 Filed plttf's memorandum of law in opposition to deft's motion.
- 71 Filed Merrill Lynch's reply memorandum of law in support of show ,
cause order.
- 71 Filed affidavit of C. Sovel in opposition to motion by Merrill, Lynch.
- 71 Filed stip & order that time for deft. Halle & Stieglitz to answer,
second amended complaint is ext. to 11-19-71. So ordered. Bonsal, J.
- 71 Filed ANSWER of deft. Halle & Stieglitz to second amended complaint. G.
- 71 Filed order that action is discontinued without prejudice & without,
costs as to deft. Blair & Co. Ryan, J.
- 71 Filed ANSWER by Dempsey-Tegeler & Co. to second amended complaint.
- 71 Filed ANSWER by deft. Reynolds & Co. to second amended complaint.
- 71 Filed ANSWER by deft. N.Y. Stock Exchange to second amended complaint. M.
- 71 Filed ANSWER by deft. Spencer Trask & Co. to second amended complaint. E.
- 71 Filed ANSWER BY DEFT. Stone & Webster to second amended complaint. M.
- Filed One Brown Envelope ORDERED SEALED and RETURNED - not to be unsealed without
further court order - called EXHIBIT B - with affidavit attached of
Robert A. Krantz, Jr. - and Placed in Vault Room 602.
- Filed One Brown Envelope ORDERED SEALED and RETURNED - Not to be unsealed without
further court order - called EXHIBIT A AND EXHIBIT B - with affidavit attached
of Harry Jacobson - and Place in Vault Room 602.
- 71 Filed deft's L.F. Rothschild & Co. proof of mailing of notice of class,
action.
- 71 Filed ANSWER of deft. Steiner, Rouse & Co. to second amended complaint.
- 71 Filed one envelope ordered sealed & impounded & placed in court's
vault.
- 71 Filed one blue envelope enclosed under seal is affidavit of attorney,
for deft. Bear, Stearns: distribution of notice & list pursuant to
order of Judge Ryan dated 11-1-71
- 71 Filed on blue envelope enclosed under seal is affidavit of attorney for
R.W. Pressprich & Co. re: distribution of notice & list pursuant
to order of Judge Ryan dated 11-1-71.
- 1 Filed affidavit of M.L. Kall of distribution of notice of class action.
- 1 Filed affidavit of A.L. Meentemeier, distribution of notice of class
action. (Both above affidavits placed in vault by Ryan, J.)
- 1 Filed stip & order that time which deft's Lehmann Bros. Bank &
A.L. Day may answer amended complaint is ext. from 11-1-71 to
12-17-71. So ordered.

- 71 Filed consent & order that Stroock & Stroock & Lavan be substituted, as attys of record for deft. (Scheinman) So ordered. Ryan, J.
- 1 Filed affidavit of W.J. Crowe, Jr. of service of notice of class action.
- 71 Filed affidavit of R.L. Latchford in compliance with order of 11-J-71.
- 71 Filed ANSWER of deft. Newburger, Loeb & Co. to second amended complaint. FK
- 71 Filed affidavit of Mailing of notice of class action to former, empolyees of H. Hentz & Co. (Order to remain sealed, by Judge Ryan, on 10-13-71. (Placed in vault in RM. 602).
- 1 Filed affidavit of W.J. Fitzpatrick, mailed notices to former registered representatives on 11-24-71 (List attached).
- 71 Filed affdvt of compliance of Tucker, Anthony & P.L. Day (in sealed envelope)
- 71 Filed Exhibit 2 of affdvt of Anthony N. Englese (impounded, sealed & placed in vault in rm 602 pursuant to order of Ryan, J. dated 11-1-71--to remain sealed until further order of Court)
- 71 Filed affidavit of compliance by B.J. McGlinn, Jr. to Judge Ryan's, order. (Placed in vault in Rm: 602)
- 71 Filed list of individuals to whom Harris, Upham & Co. mailed the notice of class action. (Placed in vault RM: 602)
- Filed Dempsey-Tagalar & Co. list of class members (sealed & impounded in vault)
- Filed Goodhead & Co. schedule of securities representatives served with notice of class action (Sealed in Vault by order of Court)
- Filed affdvt of Robert Anderson with Exhibit B (which is enclosed in a sealed envelope by order of Court dated 11-1-71 & placed in Vault in rm. 602)
- Filed affdvt of compliance of E. Michael Gowney with Exhibit 2 attached & ordered impounded & sealed in Vault in rm. 602
- 71 Filed affidavit by Mudge Rose, Guthrie & Alexander submitted under seal pursuant to order of Ryan, J. (Placed in vault in rm. 602)
- 71 Filed affidavit of A.M. Englese pursuant to order of Ryan, J.
- Filed affidavit of Mailing of notices of class action by E.P. Bond. (Placed in vault in Rm. 602)
- Filed affidavit by L. Berkowitz of service by mail of notice of class action on behalf of Newburger, Loeb & Co. (Placed in vault Rm. 602.)
- Filed stip & order that attys for deft. is substituted. (Haile & , Sriegler) So ordered. Croake, J.
- Filed affidavit of distribution of notice of class action by deft., Pierce, Fennell & Co. sealed subject to court order dated 11-1-71
- Filed affidavit of compliance by Peter Gruenberger.
- 71 Filed affidavit of service by mail of Mauro Draghi.
- 71 Filed affidavit of R.A. Barron Re: notice of class action
- 71 Filed ANSWER to second amended complaint by deft. Harris, Upham & Co.
- 71 Filed ANSWER of deft. Brookdale Securities to second amended complaint.
- 71 Filed affidavit of mailing of notices of class action by S.A. Block. (Placed in vault in RM: 602)
- Filed deff. S. Reynolds & Co. affidavits & notice of motion to dismiss, action against Reynolds & Co. ret. before Ryan, J. on 1-6-72.
- Filed deff. S. Reynolds & Co. memorandum in support of his motion ret. 1-6-72.
- Filed envelope from S. Reynolds & Co. placed in vault.
- 71 Filed transcript of proceedings dated Oct. 7-71.
- 71 Filed sealed envelope from Winthrop, Stimson, notices returned, & undelivered. (Placed in vault rm. 602)
- 71 Filed one sealed envelope from Winthrop, Stimson, notices returned, & undelivered. (Placed in vault rm. 602)
- 71 Filed affidavit of J.P. Limer in support of motion by Harris, Upham
- 71 Filed transcript of proceedings dated Oct. 12-71.
- 71 Filed transcript of proceedings dated Oct. 12-71.

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- 2-72 Filed affidavit of A.L. Meentemeier, annexed hereto as exhibit A, is a listing of those members of class. (Placed in vault Rm. 602.)
- 2-72 Filed one sealed envelope from Beekman & Bogue. (Placed in vault Rm. 602.)
- 2-72 Filed affidavit of M.L. Kuil in compliance with order of court dated, 11-1-72. (Placed in vault Rm. 602.)
- 2-72 Filed one sealed envelope from Beekman & Bogue. (Placed in vault.)
- 0-72 Filed affidavit of W.J. Fitzpatrick Re: notices returned as undelivered (Placed in vault Rm. 602.).
- 3-72 Filed affidavit of Alvin M. Stein with permission of the court in order to formally join Shearson, Hammill in the application before this court.
- 3-72 Filed supplementary affidavit by A.M. Englese in support of motion, by Reynolds & Co.
- 3-72 Filed supplementary memorandum of law in support of motion by Reynolds, & Co.
- 3-72 Filed stip & order that the second amended complaint shall mean & refer to Lehman Brothers, a partnership & party to this proceeding. So ordered. Weinfeld, J.
- 3-72 Filed stip & order that time which deft's Lehman Bros. & Tucker, Anthony & R.L. Day may answer second amended complaint is ext from 12-17-71 to 1-21-72. So ordered. Weinfeld, J.
- 72 Filed affidavit by N. Leventon in support of motion to dismiss.
- 7-72 Filed affidavit of A.M. Englese with one sealed envelope Exhibits 1, & 2 (Placed in vault in RM. 602.)
- 0-72 Filed affidavit of H.G. Florence with sealed envelope. List of class, members to whom notice was mailed, but returned undelivered.
- 1-72 Filed affidavit of R.L. Latchford in compliance with order of this court dated 11-1-72. (Placed in vault Rm. 602.)
- 1-72 Filed one sealed envelope from Smity, Barney & Co. (Placed in vault)
- 1-72 Filed affidavit of R.H. Anderson in compliance with order of 11-1-71.
- 1-72 Filed one sealed envelope from Sullivan & Cromwell.
- 1-72 Filed affidavit of R.A. Krantz in compliance with order of 11-1-71
- 1-72 Filed one sealed envelope from Sullivan & Cromwell. (placed in vault)
- 1-72 Filed affidavit of W.J. Goldenblum in compliance with order of 11-1-71
- 1-72 Filed one sealed envelope from Sullivan & Cromwell. (Placed in vault).
- 1-72 Filed one Sealed envelope-supplementary affidavit of compliance of James N. Carter. (Placed in vault Rm. 602)
- 72 Filed supplemental affidavit of compliance by H.G. Florence is submitted to supplement Peter Gruenberger's affidavit of 12-15-71.
- 72 Filed ANSWER of deft. Tucker, Anthony & R.L. Day to second Amended, 5th complaint.
- 72 Filed ANSWER of deft. Lehman Bros. to second amended complaint.
- 72 Filed affidavit of officer of Dominick & Dominick of service of notice of class action.
- 72 Filed supplemental affidavit by L.G. Miller RE: notice mailed.
- 72 Filed plaintiff's notice to take deposition of deft. N.Y. Stock Exchange, on 2-3-72.
- 72 Filed one sealed envelope from Guggenheimer & Untermyer, affidavits returned notices of class action.
- 72 Filed transcript of record of proceedings taken on 10-7-71 (Filed on 12-28-71)
- 72 Filed transcript of record of proceedings taken on 10-21-71 (Filed on 12-28-71)

TE	PROCEEDINGS	ONLY COPY AVAILABLE	Date of Judgment
8-72	Filed Memorandum Opinion. I have concluded that that the moving defendants' motion to dismiss the action, or alternatively to redefine the class, should be denied. So Ordered. Ryan J. -mailed notice.		
8-72	Filed deft Harris Upham & Co. Incorp, striking the class action allegations from the second amended complaint. Ret. 1-6-72 Motion		
8-72	Filed MEMO. END, motion filed 2-8-72 Motion denied, see memorandum opinion filed this day. So Ordered. Ryan J.		
8-72	Filed MEMO. END, on motion filed 1-5-72 Motion denied; see memorandum opinion this day. So Ordered. Ryan J.		
1-72	Filed affidavit of compliance by W. Muller in compliance with order of Ryan, J. dated 11-1-72.		
1-72	Filed one envelope from Breed, Abbott & Morgan Exhibit 2 to affidavit of compliance.		
1-72	Filed affidavit of compliance by D.N. Gershuny in compliance with order of 11-1-72.		
1-72	Filed one sealed envelope from Breed, Abbott & Morgan Exhibit 2 to affidavit of compliance.		
1-72	Filed one sealed envelope from " " " " " 3 to affidavit of compliance. (Placed in vault Rm. 602.)		
8-72	Filed supplemental affidavit of H.G. Florence with sealed envelope, placed in vault Rm. 602.		
15-72	Filed affidavit of John Randazzo in compliance with order of Judge, Ryan & one sealed envelope placed in vault RM. 602.		
10-72	Filed affidavit of M.P. Deane Re; Mailing of Notice of class actions.		
17-72	Filed affidavit by E.P. Bond of further compliance with respect to mailing of notices of class action.		
8-72	Filed transcript of Oct. 12, 1971 granting plttf's motion to amend, complaint etc. Order to be submitted. Ryan, J. (Order entered 10-13-71) (Transcript Filed on 12-28-71).		
-72	Filed plttf's notice to take deposition of deft. New York Stock Exchange on 2-25-72.		
72	Filed notice of settlement & Order that action is dismissed as against, deft. Dempsey-Tegeler Co. (in liquidation) without prejudice & without costs. Ryan, J.		
72	Filed notice of settlement & Order that action is dismissed as to, deft. Orvis Brothers & Co. (in liquidation) without prejudice & without costs. Ryan, J.		
72	Filed affidavit of J.H. Mosier regarding mailing of notices of class action.		
72	Filed affidavit of J. Conroy regarding mailing of notices of class action.		
2	Filed Supplemental affidavit of compliance of Shearson, Hammill & Co., sealed pursuant to order of Judge Ryan. Placed in vault rm. 602.		
2	Filed plttf's notice to take deposition of J. Cunningham on 3-16-72.		
72	Filed deposition of New York Stock Exchange taken by plttf. on 2-8-72. m/c		
72	Filed plttf's supplemental depositions to deft. Hamburger, Loh & Co.		
14-	" " " " " E.F. Hutton & Co.		
4-72	" " " " " Rauscher Pierce Securities.		
4-72	" " " " " Reynolds & Co.		
4-72	" " " " " R.H. Rothschild & Co.		
4-72	" " " " " Shearson, Hammill & Co.		
4-72	" " " " " Smith Barney & Co.		
4-72	" " " " " T. P. Pender, Peabody & Co.		

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Judge

-72	Filed	ptff's supplemental interrogs to deft. W. E. Hutton.	
-72	"	" " " " " " Harris, Upham & Co. Inc.	
-72	"	" " " " " " Panie, Webber, Jackson, Curtis.	
-72	"	" " " " " " R.W. Pressprich & Co.	
-72	"	" " " " " " Pressman Frolich & Frost.	
-72	"	" " " " " " Spencer Trask & Co.	
-72	"	" " " " " " Steiner, Rouse & Co.	
-72	"	" " " " " " Halle & Stieglitz, Inc.	
-72	"	" " " " " " Goodbody & Co.	
-72	"	" " " " " " Dominik & Dominik, Inc.	
-72	"	" " " " " " Brookdate Securities Corp.	
-72	"	" " " " " " Bear, Stearns & Co.	
-72	"	" " " " " " Bache & Co.	
-72	"	" " " " " " Dean Witter & Co. Inc.	
-72	"	" " " " " " Hirsch & Co.	
-72	"	" " " " " " Thomson & McKinnon Auchincloss	
-72	"	" " " " " " Tucker Anthony & R.L. Day.	
-72	"	" " " " " " Lehman Brothers.	
-72	"	" " " " " " Walston & Co. Inc.	
-72	"	" " " " " " Hornblower & Week-Hemphill.	
-72	"	" " " " " " Stone & Webster Securities.	
-72	"	" " " " " " Loeb, Rhoades & Co.	
-72	"	" " " " " " Oppenheimer & Co.	
-72	Filed	ptff's affidavit & notice of motion met. before Edelstein, CH.J. assigning action to a single judge for all purposes.	
72	Filed	Order that action is referred to Judge Ryan, for all purposes, with his consent. Edelstein, CH.J. n/a	
72	Filed	deft's attys notice of change of address & telephone number, deft. Goodbody & Co.	
72	Filed	Notice of settlement & Order that action is dismissed as against, deft. Hirsch & Co. (in liquidation) without prejudice & without, costs, but with securities representatives formerly employed by, said deft. remaining members of the class as defined by this court's order of October 12, 1971, or by any further order of the court. Ryan, J. Mailed notice.	
72	Filed	deposition of Dr. William C. Fraund taken by ptff's on 2-25-72.	
72	Filed	transcript of record of proceedings of Jan. 6, 1972.	
-72	Filed	stip & order that time which the deft. Reynolds & Co. may, respond to ptff's supplemental interrogs is ext. to 5-10-72. So ordered. Ryan, J.	
-72	Filed	ANSWER by deft. Rauscher Pierce Securities Corp.	SGK
-72	Filed	deft's R.W. Pressprich & Co. answers to ptff's interrogs.	
-72	Filed	deft's Bear, Stearns & Co. answers to ptff's supplemental, interrogs.	
-72	Filed	deft's N.Y. Stock Exchange notice of motion rec. before Edelstein to vacate order of 3-22-72.	
-72	Filed	affidavit of W.E. Jackson in support of motion to vacate order.	
-72	Filed	memo-endorsed on deft's N.Y. Stock Exchange motion to vacate, order. Denied. Edelstein, CH.J. n/a	
-72	Filed	deft's memorandum in support of motion to vacate order.	
2	Filed	Deft. Shearson, Hamill & Co. answers to ptff's supplemental interrogs.	
-72	Filed	affidavit of C. Savel in opposition to deft's motion.	
-72	Filed	stip & Order that time for deft. Bache & Co. to answer interrogs is ext. to 5-10-72. So ordered. Ryan, J.	

15 A
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v 3152 J. John Jacobi etal

vs. Bache & Co., etal

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C. 110 Rev. Civil Docket Continuation

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DATE	PROCEEDINGS	Dr. Jury
7.10-72	Filed deft's (Oppenheimer & Co) answers to plttf's supplemental interro	
7.10-72	Filed deft's (Pressman answers to plttf's supplemental interrogs.	
7.10-72	Filed deft's (Goodbody & Co.) answers to plttf's supplement interrogs	
7.10-72	Filed deft's (W.E. Hutton & Co. answers to plttf's " " "	
7.10-72	Filed deft's (Dominick & Dominick answers to " " "	
7.10-72	Filed deft's (L.F. Rothschild & Co.) answers to " " "	
12-72	Filed stip & order that time within which deft's Lehman Bros & Tucker. Anthony & R. L. Day may serve their answers to plttf's supplemental interrogs is ext. from 5-10-72 to 5-31-72. So ordered. Ryan, J.	
12-72	Filed stip & order that time of deft. Harris, Upham & Co. to respond, to plttf's supplemental interrogs is ext. to 5-22-72. So ordered. Ryan, J.	
7.12-72	Filed answers of deft. Hornblower & Weeks to plttf's supplemental interrogs.	
12-72	Filed deft's Loeb, Rhoades answers to plttf's supplemental interrogs.	
12-72	Filed deft's Dean Witter & Co. answers to plttf's " " "	
12-72	Filed deft's Kidder, Peabody & Co. answers to " " "	
12-72	Filed deft's Bache & Co. answers to plttf's " " "	
12-72	Filed deft's Smith, Barney & Co. answers to " " "	
12-72	Filed Deft's Paine, Webber, Jackson answers to " " "	
15-72	Filed deft's Spencer Trask & Co. answers to plttf's supplemental, interrogs.	
16-72	Filed deft's Brookdale Securities Corp. to plttf's supplemental interro	
24-72	Filed Answers of deft. Harris, Upham & Co. Inc. to Plttf's Supplemental Interrogs.	
23-72	Filed Notice of Deposition of deft. Assn. of Stock Exchange Firms by Dr. L.T. Kendall.	
17-72	Filed Reynolds & Co. answers to plttf's supplemental interrogs.	
2-72	Filed stip & order that time of deft. Stone & Webster Securities to answer interrogs is ext. from 5-24-72 to 6-9-72. So ordered. Cannella, J.	
26-72	Filed Deft's Steiner, Rouse answers to plttf's supplemenal interrogs.	
5-72	Filed deft's Tucker, Anthony answers to plttf's supplemental interrogs.	
5-72	Filed deft's Lehman Brothers to plttf's supplemental interrogs.	
8-72	Filed stip & order that time of deft's Lehman Bros. & Tucker, Anthony, & R.L. Day may serve their answers to plttf's supplemental interrogs is ext. from 5-31-72 to 6-12-72. So ordered. Ryan, J.	
12-72	Filed stip & order that time for deft. Stone & Webster Securities to answer interrogs is ext. from 6-9-72 to 6-23-72. So ordered. Cooper, J.	
12-72	Filed response of deft. Walston & Co. to plttf's supplemental interro	
23-72	Filed deft's Stone & Webster answers to plttf's interrogs.	
7-72	Filed notice to take deposition of N.Y. Stock Exchange, & Kidder, Peabody & Co.	
4-72	Filed Deposition of witness Irwin M. Stelzer, taken on 6/15/72 at 10:00 O'clock.	
2-72	Filed Answers of Deft. Halle & Stieglitz, Inc. to Plttf's Supplemental Interrogs.	
2-72	Filed record of the transcript of proceedings, dtd April 12, 1972.	
2-72	Filed record of the transcript of proceedings, dtd May 31, 1972.	
23-72	Filed defts Bache & Co, Dean Witter & Co. Kidder, Peabody & Co. and Smith, Barney & Co. Inc. request for the production of documents.	
2-72	Filed defts request for production of documents, of each deft.	
2-72	Filed defts Interrogatories to the deft.	
2-72	Filed deft. Newburger, Job & Co. answer to plttf's supplemental Interrogatories.	

JUDGE WARD

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PROCEEDINGS

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Date of
Judgment

- 1-72 Filed stip & order that the date for deft N.Y. Stock Exchange, Inc. to answer
pltffs Interrogatories is set at 11/20/72. So Ordered Ryan J.
- 3-72 Filed Pltffs notice of motion, Re: Answer Interrogatories, Ret before Ryan J.
- 3-72 Filed memo endorsed on motion papers filed 11/3/72, The within motion after hearing
is disposed of, by consent on the terms noted on the within motion. Appropriate
consent order will be submitted to the court within 10 days. So Ordered Ryan J. m/n
- 2 Filed pltffs supplemental Interrogatories to deft N.Y. Stock Exchange, Inc.
- 7-72 Filed stip & order that the financial information relating to member firms
supplied to pltffs in the Exchange's answers to interrogatories #6&7 sworn to
11/20/72 shall be maintained in confidence and disclosed to no other person or
party except for purposes of prosecution of this action and any appeals therefrom
So Ordered Ryan J.
- 72 Filed deft Exchange's answers to pltffs Interrogatories.
- 72 Filed Stip & Order that John F Walsh is substituted as counsel for deft
Dominick & Dominick Incorp. in place of Monaghan & Walsh. So Ordered- Ryan J.
- 1-72 Filed transcript of the record of proceedings dtd 11/3/72
- 9-72 Filed stip & order that George Saks the attorney in this action be substituted as
attorney of record for Newburger, Loeb, & Co. So Ordered Ryan J.
- 73 Filed defts Answers and objections of Rauscher Pierce Securities Corp. to pltff's
Interrogatories.
- 5-73 Filed Deposition of Dft. Kidder Peabody & Co., Inc. dated 9/19/72. (m/n)
- 7-73 Filed Deft. Thomson & McKinnon Auchincloss Inc. Answer & Objections to pltff's
interrogs.
- 73 Filed Deft. Thomson & McKinnon Auchincloss Inc. Answer to Supplemental Interrogs.
- 6-73 Filed Notice of Change of Address for Deft. Reynolds & Co., Atty.
- 73 Filed Pltffs. Notice of Motion. Re: Partial Summary Judgment. ret. 9/28/73.
- 73 Filed Pltffs. Memorandum of law in support of motion for partial summary judgment.
- 73 Filed Stip & Order that pltffs. motin for partial judgment is adjourned to
10/18/73; & defts. will serve opposition to pltffs. ,etc on or before 10/5/73.
Ryan J.
- 73 Filed ~~Deft~~ Defts Stone & Webster Securities Corp's Notice of Cross-Motion for
granting Summary Judgment.
- 73 Filed Memorandum of Law Deft, etc, in opposit on to pltffs Motion for partial
Summary Judgment and in support of its cross-motion for summary Judgment to
dismiss the complaint herein.
- 73 Filed defts. Bache & Co., et al, Notice of Motion for Summary Judgment and affdvt
in opposition to pltffs motion for Partial Judgment and in support of defts
motion for Summary Judgment.
- 73 Filed defts. Bache & Co, et al, Memorandum in opposition to pltffs Motion for
Partial Summary Judgment And in support of defts Motion for Summary Judgment.
- 73 Filed defts Notice Of Motion and Affdvt in opposition to pltffs Motion and in support
of HENSON HARRILL'S motion for summary judgment.
- 73 Filed pltffs' reply affdvt to affdvt of Wm.E. Jackson.
- 73 Filed pltffs memorandum in reply to the opposition of all defts etc.
- 73 Filed Reply memorandum of law in support of motion for summary judgment of deft.
Association of Stock Exchange Firms.
- 73 Filed Reply memorandum in support of defts. motion for summary judgment & in
opposition to pltffs. motion for summary judgment.
- 73 Filed defts (Henson Harrill) memorandum of law in support of its motion for
Summary Judgment.
- 72 Filed Deft. Brookdale Securities Corp., Notice of Motion. re: Attys. Withdraw.
etc. 12/5/73.
- 73 Filed memo endorsed on motion filed 11-14-73--Motion granted, Attys Stroock Stroock
& Lavan are granted leave to withdraw as attys for deft. Brookdale Securities.
So Ordered--Ryan J. mailed notice.

DATE	FILINGS—PROCEEDING	ONLY COPY AVAILABLE	AMOUNT REPORTED IN EMOLUMENT RETURNS
Jan 24 74	MAILED NOTICE OF REASSIGNMENT		
Mar. 1-74	Filed deft's (N.Y. Stock Exchange) exchange's request of plffs. to admit.		
Mar 1.74	Filed Stip. & Order that any party may introduce in evidence at trial all or any part of deposition testimony of the following witnesses: David D. Huntoon, Dr. William C. Freund, R. John Cunningham, Robert Haack Ralph D. DeNunzio, Dr. Irwin Stelzer, Dr. LT. Kendall, etc. Ward J.		
Mar. 1-74	Filed defts' list of witnesses to testify at trial.		
Mar. 4-74	Filed stip & order-amending caption-Deft. Dominick & Domink Inc. shall hereafter be Dominick International Corp--Ward, J.		
Mar. 4-74	Filed stip & order of voluntary dismissal as to deft. H. Hentz & Co. ---Ward, J.		
Mar 5.74	Filed Answers to interrogs of Deft. Pressman, Frohlich & Frost Inc.		
Mar 6.74	Filed Stip & Order that Sullivan & Cronwell is substituted as atty for deft. in place & stead of John T. Walsh. Ward J. (Dominick International Corp)		
Mar 7.74	Filed Stip & Order that this action is dismissed as against H. Hentz & Co., Inc., without prejudice & without costs. Ward J.		
Mar 4.74	Before Judge Ward Trial begun Comp. vs. Stone & Webster See Dismissal,		
Mar 5.74	Trial Continued		
Mar 6.74	Trial continues Comp. vs. Shearson Hamell dismissed without prejudice & without costs. Trial concluded. Decision reserved. Proposed Findings & Conclusions to be filed by 3/17/74. Non Jury.		
Mar 8/74	Filed Memo. End. on Deft. Shearson Notice of Motion dated 10/9/73. Motion withdrawn. Ward J.		
Mar 11.74	Filed Stip & order of dismissal as to deft. Shearson Hamell & Co., Inc. only, without prejudice. Ward J.		
Mar 13.74	Filed Memorandum of law in support of deft. 3d's Cross motion for summary judgment.		
Mar 13.74	Filed Reply Memorandum of law in support of motion for summary judgment of deft. Association of Stock & Bond Brokers.		
Mar 13.74	Filed Consent Order that deft. 3d's Cross motion for summary judgment be & is granted, with prejudice & without costs. Entry of judgment against plffs. for costs. ASEU requested entry of final judgment as to all other parties. Ward J.		
Mar 13.74	Filed Deft. ASEU Motion of Cross Motion. Summary judgment. dated 10/10/73		
Mar 13.74	Filed Memo. End. on Motion of Deft. ASEU dated 10/13/73. Motion granted. Submit Order Ward J. (all parties)		

FILINGS—PROCEEDINGS

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AMOUNT
REPORTED
EMOTION
RETURN

DATE	
21.74	Filed Order Granting Stone & Webster's motion for summary judgment. Ordered pl'tffs. motion for summary judgment as to def't. Stone & Webster is denied. & def't. Stone & Webster's cross motion for summary judgment dismissing the 2nd amended complaint as to them is granted with prejudice & without costs. Ward J. Judgment Ent. 3/21/74 Clerk, Ent. 3/22/74 (mailed notice)
	13.
74	Filed Memo. End on motion dated 10/5/73 by Def't. Stone & Webster. Motion granted on consent of the attys for pl'tffs. Settle Order on' Notice. Ward J.
74	Filed Pl'tffs. Requests for Findings of Fact & Conclusions of Law.
74	Filed transcript of record of proceedings, dated 3-4-5-6-74
74	Filed Opinion #40763. Accordingly, the pl'tffs. Second Amended complaint is dismissed. The foregoing constitutes the findings of fact & conclusions of law of the Court for the purpose of rule 52FRCP. SETTLE JUDGMENT ON NOTICE. Ward J. (mailed notice)
74	Filed Judgment. Order that the pl'tffs. Second Amended Complaint is & dismissed. Ward J. Judgment Ent. Clerk. Ent. 6/26/74. (mailed notice)
74	7/2/74 Bill of Costs as taxed in the amt. of \$131.08 in favor of def'ts. Loeb, Rhoades & Co., as against pl'tffs. and added to the judgment. Clerk.
74	Filed Bill of Costs Docket as Judgment #74,553 in the amt. of \$131.08. Clerk.
74	Filed Affidavit in support of verified Bill of Costs. by George Wailand.
74	Filed Bill of Costs in favor of Bache & Co., Inc., Kidder Peabody & Co., Inc., Dean Witter & Co., Inc., Smith Barney & Co., Inc. & Dominick International in the amt. 1268.54. Docketed as Judgment #74,576.
74	Filed pl'tffs notice of appeal from the judgment entered 6-24-74. (mailed notices)

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SECOND AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
L. JOHN JACOBI and ROBERT GAMERA, individu-
ally, and on behalf of all other securities
representatives similarly situated,

Plaintiff

-against-

BACHE & CO.; WALSTON & CO., INC.; E. F.
HUTTON & CO., INC.; THOMSON and McKINNON
AUCHINCLOSS, INC. (formerly THOMSON &
McKINNON, INC),; HORNBLOWER and WEEKS -
HEMPHILL, NOYES; LOEB, RHOADES & COMPANY;
TUCKER, ANTHONY & R. L. DAY; HENTZ & CO.;
DELAFIELD & DELAFIELD; HARRIS, UPHAM &
CO. INC.; DOMINICK & DOMINICK, INC.;
SHEARSON HAMILL & CO.; HALLE & STIEGLITZ,
INC.; ORVIS BROTHERS & CO.; DEMPSEY TEGLER
& CO., INC; GLORE-FORGAN, WILLIAM R. STAATS,
INC.; FRANCIS I. DUPONT & CO; GOODBODY &
CO; HIRSCH & CO; BEAR, STEARNS & CO; LEHMAN
BROS. INC; KIDDER, PEABODY & CO. INC; R. W.
PRESSPRICH & CO, INC; STONE & WEBSTER
SECURITIES CORP.; DEAN WITTER & CO. INC;
W. E. HUTTON; A. G. EDWARDS & SONS, INC;
REYNOLDS & CO; PAINE, WEBBER, JACKSON &
CURTIS; SCHEINMAN, HOCKSTIN & TROTTA,
INC; PRESSMAN, FROHLICH & FROST, INC; NEW-
BURGER, LOEB & CO.; RAUSCHER, PIERCE
SECURITIES CORP.; OPPENHEIMER & CO.;
STEINER, ROUSE & CO. INC; L. F. ROTHSCHILD
& CO.; SPENCER TRASK & CO. INC; SMITH,
BARNEY & CO, INC; MERRILL. LYNCH, PIERCE,
FENNER & SMITH, INC; THE ASSOCIATION OF STOCK
EXCHANGE FIRMS AND THE NEW YORK STOCK
EXCHANGE,

Defendants
-----x

SECOND AMENDED
COMPLAINT

CLASS ACTION

70 Civ. 3152

JURY TRIAL
IS DEMANDED

Plaintiffs, by their attorney, Abraham E. Freedman, for their complaint allege as follows:

FIRST CAUSE OF ACTION

JURISDICTION AND VENUE

1. This claim arises and is brought under Sections 4 and 16 of the Clayton Act (15 U.S. §15 and 26) to enjoin defendants from violating and from hereafter continuing to violate Sections 1 and 2 of the Sherman Act (15 U.S.C. §1 and 2) and to recover treble damages and the costs of suit, including reasonable attorney's fees for said violations.

2. Jurisdiction is vested in this Court by virtue of 28 U.S.C. §1331 and 1337.

3. Each defendant transacts business or is found or has an agent within this District, and the unlawful activities complained of were and are being carried on in part by defendants within this District.

THE PARTIES

4. This action is brought on behalf of professional securities representatives who were in the employ of the defendants subsequent to March, 1970 during the same periods of time that the named plaintiffs were so employed.

5. During the period of the conspiracy and concert of action alleged herein, and more particularly for a period of approximately fourteen years up until May 1970, plaintiff L. John Jacobi was

employed by defendant Goodbody & Co., in the capacity of securities representative. During the period of the conspiracy and concert of action alleged herein and more particularly for the period January 1, 1969 to August 1, 1969, plaintiff Robert Gamera was employed by defendant Glore-Forgan, William R. Staats, Inc., in the capacity of a securities representative and was so employed in a similar capacity by the defendant Walston & Company for the period August, 1969 to July, 1971.

6. Each of the defendants, except defendants Association of Stock Exchange Firms and New York Stock Exchange, is a corporation or partnership duly organized and existing by virtue of the laws of one of the states of the United States, and each is found or transacts business or is doing business within this district at the following addresses:

Bache & Co., Inc.	36 Wall Street, New York, N.Y.
Walston & Co., Inc.	74 Wall Street, New York, N.Y.
E. F. Hutton & Co., Inc.	1 Chase Manhattan Plaza, N. Y.
Thomson and McKinnon Auchincloss, Inc.	2 Broadway, New York, N.Y.
Hornblower and Weeks- Hemphill, Noyes	8 Hanover Street, New York, N.Y.
Loeb, Rhoades & Co.	42 Wall Street, New York, N.Y.
Tucker, Anthony & R. L. Day	120 Broadway, New York, N.Y.
Hentz & Co., Inc.	72 Wall Street, New York, N.Y.
Delafield & Delafield	140 Broadway, New York, N.Y.
Harris, Upham & Co., Inc.	120 Broadway, New York, N.Y.

Dominick & Dominick, Inc.	14 Wall Street, New York, N.Y.
Shearson, Hammill & Co.	14 Wall Street, New York, N.Y.
Halle & Stieglitz, Inc.	52 Wall Street, New York, N.Y.
Orvis Brothers & Co.	30 Broad Street, New York, N.Y.
Dempsey Tegler & Co., Inc.	110 Wall Street, New York, N.Y.
Glore-Forgan, William R. Staats, Inc.	95 Wall Street, New York, N.Y.
Francis I. DuPont & Co.	1 Wall Street, New York, N.Y.
Goodbody & Co.	55 Broad Street, New York, N.Y.
Hirsch & Co.	25 Broad Street, New York, N.Y.
Bear, Stearns & Co.	1 Wall Street, New York, N.Y.
Lehman Brothers, Inc.	1 William Street, N.Y.C.
Kidder Peabody & Co., Inc.	20 Exchange Place, New York, N.Y.
R.W. Pressprich & Co., Inc.	80 Pine Street, New York, N.Y.
Stone & Webster Securities Corp.	90 Broad Street, New York, N.Y.
Dean Witter & Co., Inc.	14 Wall Street, New York, N.Y.
W.E. Hutton	14 Wall Street, New York, N.Y.
A.G. Edwards & Sons, Inc.	39 Broadway, New York, N.Y.
Reynolds & Co.	120 Broadway, New York, N.Y.
Paine, Webber, Jackson & Curtis	140 Broadway, New York, N.Y.
Scheinman, Hochstin & Trotta, Inc.	111 Broadway, New York, N.Y.
Pressman, Frohlich & Frost, Inc.	140 Broadway, New York, N.Y.

Newburger, Loeb & Co.	5 Hanover Square, New York, N.Y. ^{23A}
Rauscher, Pierce Securities Corp.	76 Beaver Street, New York, N.Y.
Steiner Rouse & Co., Inc.	19 Rector Street, New York, N.Y.
Oppenheimer & Co.	5 Hanover Square, New York, N.Y.
L.F. Rothschild & Co.	99 William Street, N.Y.C.
Spencer Trask & Co., Inc.	60 Broad Street, New York, N.Y.
Smith Barney & Co., Inc.	20 Broad Street, New York, N.Y.
Merrill, Lynch, Pierce, Fenner & Smith, Inc.	70 Pine Street, New York, N.Y.

7(a) Defendant New York Stock Exchange is a voluntary association governed by the General Association Law of the State of New York, which furnishes facilities for the transaction of the business of buying and selling securities, and regulates the conduct of its members. Each of the broker defendants is a member of the New York Stock Exchange. The New York Stock Exchange maintains its place of business at 11 Wall Street, New York, New York, and is doing business within this District.

(b) On information and belief defendant Association of Stock Exchange Firms is a voluntary association governed by the General Association Law of the State of New York having as its members various firms engaged in the stock brokerage business including, among others, the other defendants hereinabove named. The Association of Stock Exchange Firms maintains an office at 120 Broadway, New York, New York and is doing business within this District.

CLASS ACTION ALLEGATIONS

8. Plaintiffs are representatives of a class as defined by

Rule 23 of the Federal Rules of Civil Procedure and bring this 24A
action on behalf of themselves and the entire class as described
in paragraph 9 below.

9. The class is comprised of securities representatives, sometimes known as registered representatives who were in the employ of the defendants subsequent to March 1970 during the same periods of time that the named plaintiffs were so employed.

10. The class is so numerous and geographically so widely distributed that joinder of all members is impracticable. There are questions of law or fact common to the class. The claims of the plaintiffs are typical of the claims of the class and the plaintiffs will fairly and adequately protect the interests of the class.

11. The prosecution of separate actions by individual members of the class would create the risk of:

(a) Inconsistent or varying adjudications with respect to the individual members of the class which would establish incompatible standards of conduct for the parties opposing the class, or

(b) Adjudications with respect to the individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications of substantially impair or impede their ability to protect their interests.

12. Defendants, in their combination and conspiracy and concert of action, as more fully set forth herein, have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding

• declaratory relief with respect to the class as a whole.

25A

13. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available means for the fair and efficient adjudication of the controversy.

14. The primary business in which each of the defendants listed in paragraph 6 is engaged is acting as a broker in the purchase and sale of securities, both on public exchanges and in the over-the-counter market. (Hereafter these defendants are sometimes referred to as the "broker defendants.") Each of the broker defendants maintains offices for providing such brokerage services in numerous states of the United States, with some maintaining such offices in foreign countries as well. Each of the broker defendants are member firms of the New York Stock Exchange as well as various other exchanges. The business of said defendants of acting as brokers in the purchase and sale of securities involves a substantial volume of interstate trade and commerce, including, but not limited to, the purchase and sale of securities, interstate travel, communication, transmittal of orders, advertising, promotions, and negotiations for all of the above. Each of the broker defendants' aforesaid interstate transactions involve collective annual expenditures and receipts of millions of dollars.

15. Each of the broker defendants acts on behalf of customers in the purchase or sale of securities on public exchanges or in the over-the-counter market and for such services receive a commission based on the amount of the purchase or sale. Such purchases or sales generally are initiated by orders placed by members of the public with a securities representative in the employ of the broker defendants. For their services in connection

with the purchase or sale of said securities, the securities representatives receive from their employers a commission based on a percentage of the commission received by the employer for the transaction.

SHERMAN ACT OFFENSES

16. Beginning at least as early as March 1970, the exact date being unknown to the plaintiffs, and continuing until the day of the filing of this complaint, the defendants have engaged in an unlawful combination or conspiracy to monopolize and to restrain the aforesaid trade and commerce as brokers in the purchase and sale of securities in violation of Sections 1 and 2 of the Sherman Act.

17. Beginning at least as early as March 1970, the exact date being unknown to plaintiffs, defendant New York Stock Exchange, acting on behalf of its member firms, including the broker defendants herein and the Association of Stock Exchange Firms, sought and obtained permission from the Securities and Exchange Commission for its member firms, including the broker defendants herein, to impose a surcharge on purchases of securities in the form of a service fee of \$15.00 or fifty per cent of the applicable commission, whichever was the lesser, on orders of one thousand shares or less. Said service fee went into effect on April 2, 1970 for a 90-day period and has since been extended indefinitely.

18. Since the aforesaid service went into effect, and continuing until the present, the defendants have engaged in an

unlawful combination or conspiracy to monopolize and to restrain^{21#} the aforesaid trade and commerce as brokers in the purchase and sale of securities in violation of Sections 1 and 2 of the Sherman Act in that they have concertedly refused to pay the securities representatives employed by the broker defendants any commission on the amount of the service fee surcharge which the broker defendants have been collecting from purchasers of securities. Up to the date of the filing of this complaint, the amount of the service fee surcharge collected by the broker defendants is at least \$80,000,000.00.

19. The aforesaid combination or conspiracy, and concert of action, has had, among others, the effect of reducing competition between the broker defendants in the hiring and compensating of securities representatives and the reducing of the compensation which the securities representatives employed by the broker defendants would otherwise have received.

20. As a result of the aforesaid unlawful combination or conspiracy, and concert of action, plaintiffs and the members of the class have been injured in their business or property in that they have lost substantial income which, but for the unlawful acts of defendants, they would have received in the form of additional commissions on the amount of the surcharge.

21. The aforesaid combination or conspiracy is continuing, and is causing irreparable injury to plaintiffs and the members of the class. Since any damages recoverable hereunder will only partially compensate them for all their injuries, plaintiffs have no complete and adequate remedy at law and the violations alleged herein should therefore be enjoined.

SECOND CAUSE OF ACTION

22. Jurisdiction of this cause of action is based upon the principles of pending jurisdiction. The amount in controversy exceeds \$10,000 exclusive of interest and costs.

23. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 21.

24. By virtue of the above described acts and practices defendants have combined or conspired to monopolize and restrain trade and to restrain plaintiffs and the members of the class of the free exercise of their right to employment as securities representatives in New York and in the other states in which defendants are engaged in business in violation of Section 340 of the General Business Law of New York and in violation of the antitrust and antiblacklisting statutes of such other states.

THIRD CAUSE OF ACTION

25. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 22.

26. By virtue of the above described acts and practices defendants have combined or conspired to monopolize and restrain trade and restrain plaintiffs and the members of the class in the free exercise of their right to employment as securities representatives in New York and in the other states in which defendants have engaged in business in violation of the common law of each of such states.

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WHEREFORE, plaintiffs demand judgment against defendants
as follows:

1. With respect to the first cause of action:

- (a) Declaring defendants' combination or conspiracy and concert of action to be unlawful under §1 and 2 of the Sherman Act;
- (b) Permanently enjoining defendants from continuing to violate §1 and 2 of the Sherman Act by means of the acts alleged herein or by any other means which would eliminate competition among the defendants for the services of the plaintiffs and the members of the class;
- (c) For treble the amount of damages suffered by plaintiffs and the members of the class as a result of the violations of the Sherman Act as alleged herein;
- (d) For the costs of this action and reasonable attorneys' fees;

2. With respect to the second and third causes of action:

- (a) Declaring defendants' combination and conspiracy and concert of action to be unlawful under Section 340 of the General Business Law^{of} New York and under the statutes of the several states in which defendants are engaged in business and under the common law of all of such states;

30A

(b) Permanently enjoining defendants from continuing to violate such statutes and common law by means of the acts alleged herein;

(c) For the amount of damages suffered by plaintiffs and the members of the class as a result of the statutory and common law violation alleged herein;

(d) For the costs of this action and reasonable attorneys' fees;

3. Such other and different relief as to the Court may seem just and proper.

Dated: New York, New York
September 27, 1971

ABRAHAM E. FREEDMAN
Attorney for Plaintiffs
36 Seventh Avenue
New York, New York 10011

ANSWER OF NEW YORK STOCK EXCHANGE
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- -X

L. JOHN JACOBI and ROBERT GAMBERA, individ- :
ually and on behalf of all other securities :
representatives similarly situated, :

Plaintiffs, :

-against- :

70 Civ. 3152

BACHE & CO.; WALSTON & CO. INC.; E.F. :
HUTTON & CO., INC.; THOMSON and McKINNON :
AUCHINCLOSS, INC. (formerly THOMSON & :
McKINNON, INC.); HORNBLLOWER and WEEKS- :
HEMPHILL, BOUES; LOEB, RHOADES & COMPANY; :
TUCKER, ANTHONY & R.L. DAY; H. HENTZ & CO.; :
DELAFIELD & DELAFIELD; HARRIS, UPHAM & CO. :
INC.; DOMINICK & DOMINICK, INC.; SHEARSON, :
HAMILL & CO.; HALLE & STIEGLITZ, INC.; ORVIS :
BROTHERS & CO.; DEMPSEY TEGLER & CO., INC.; :
GLORE-FORGAN, WILLIAM R. STAATS, INC.; :
FRANCIS I. DUPONT & CO.; GOODBODY & CO.; :
HIRSCH & CO.; BEAR, STEARNS & CO.; LEHMAN :
BROS. INC.; KIDDER, PEABODY & CO. INC.; :
R.W. PRESSPRICH & CO., INC.; STONE & WEBSTER :
SECURITIES CORP.; DEAN WITTER & CO. INC.; :
W.E. HUTTON; A.G. EDWARDS & SONS, INC.; :
REYNOLDS & CO.; PAINE, WEBBER, JACKSON & :
CURTIS; SCHEINMAN, HOCKSTIN & TROTTA, INC.; :
PRESSMAN, FROHLICH & FROST, INC.; NEWBURGER, :
LOEB & CO.; RAUSCHER, PIERCE SECURITIES CORP.; :
OPPENHEIMER & CO.; STEINER, ROUSE & CO. INC.; :
L.F. ROTHSCHILD & CO.; SPENCER TRASK & CO. :
INC.; SMITH, BARNEY & CO., INC.; MERRILL, :
LYNCH, FIERCE, FENNER & SMITH, INC.; THE :
ASSOCIATION OF STOCK EXCHANGE FIRMS AND THE :
NEW YORK STOCK EXCHANGE, :

ANSWER
OF DEFENDANT NEW
YORK STOCK EX-
CHANGE, INC. TO
SECOND AMENDED
COMPLAINT

Defendants. :

----- -X

Defendant New York Stock Exchange, Inc. ("the
Exchange"), by its attorneys, Milbank, Tweed, Hadley & McCloy,
for answer to the second amended complaint:

1. Denies each and every allegation contained in
paragraph 1, except admits that the action purports to be brought
pursuant to the statutes designated for the relief stated.

2. Denies each and every allegation contained in paragraphs 2, except admits that jurisdiction is alleged to exist by virtue of the designated statutes.

3. Denies each and every allegation contained in paragraph 3, except on information and belief admits that each defendant transacts business within this District.

4. Denies each and every allegation contained in paragraph 4.

5. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 5, except admits that plaintiff L. John Jacobi was employed as a registered representative for approximately fourteen years prior to May, 1970, by Goodbody & Co. and that plaintiff Robert Gambera was employed by defendant Glore-Forgan, William R. Staats, Inc., in the capacity of a securities representative from January 1, 1969 to August 1, 1969, and was so employed in a similar capacity by the defendant Walston & Company for the period August, 1969 to July, 1971, and denies the existence of any conspiracy or concert of action.

6. Admits the allegations contained in paragraph 6, except denies that the Exchange is not a corporation.

7. Denies each and every allegation contained in paragraph 7(a), except admits that the Exchange furnishes facilities for transactions by its members and member organizations in securities listed on the Exchange, regulates certain conduct of its members and member organizations, maintains its place of business at 11 Wall Street, New York, New York, and is doing business within this District.

8. Denies knowledge or information sufficient to form

a belief as to the truth of each and every allegation contained in paragraph 7(b).

9. Denies each and every allegation contained in paragraphs 8, 9, 10, 11, 12 and 13.

10. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 14, except denies that each of the "broker defendants" are member firms of the Exchange.

11. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 15, except admits that each of the "broker defendants" acts on behalf of customers in the purchase or sale of securities on public exchanges or in the over-the-counter market and for such services receives a commission based on the amount of the purchase or sale.

12. Denies each and every allegation contained in paragraph 16.

13. Denies each and every allegation contained in paragraph 17, except admits that on April 2, 1970, with the approval of the Securities and Exchange Commission the Exchange adopted a service fee of \$15 or 50% of the applicable commission, whichever was the lesser, on orders of 1,000 shares or less, and that said service fee is still in effect, although scheduled to terminate upon the effectiveness of a new commission schedule approved by the Securities and Exchange Commission.

14. Denies each and every allegation contained in paragraph 18, except denies knowledge or information sufficient to form a belief as to whether the "broker defendants" have collected at least \$80,000,000 through the service fee.

15. Denies each and every allegation contained in paragraphs 19, 20 and 21.

16. Denies each and every allegation contained in paragraph 22, except admits that jurisdiction of the second cause of action is alleged to be based on the principles of pendent jurisdiction and that the amount in controversy is alleged to exceed \$10,000, exclusive of interest and costs.

17. Denies each and every allegation contained in paragraphs 24 and 26.

FIRST DEFENSE

18. The second amended complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

19. Pursuant to its duty under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), the Exchange has adopted rules, to which its members and member organizations are bound to adhere, relating to the payment to securities representatives of commissions and other remuneration, including any portion of the service charge effective since April 2, 1970, with respect to transactions in securities listed on the Exchange. Neither the adoption of said rules by the Exchange nor the adherence thereto by its members and member organizations may be the subject of an antitrust claim by reason of the provisions of said Act.

THIRD DEFENSE

20. The establishment of the service charge effective since April 2, 1970, the rules and regulations pertaining thereto

adopted by the Exchange and the adherence thereto by its members and member organizations are within the scope and carry out the purposes of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) and are therefore justified and reasonable in answer to the assertion of an antitrust claim.

FOURTH DEFENSE

21. Since the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) provides for review and revision by the Securities and Exchange Commission of the Exchange's rules, among other things, relating to the payment to securities representatives of commission and other remuneration, exclusive jurisdiction of the subject matter of this action is vested in the Securities and Exchange Commission.

FIFTH DEFENSE

22. Since the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) provides for review and revision by the Securities and Exchange Commission of the Exchange's rules, among other things, relating to the payment to securities representatives of commissions and other remuneration, primary jurisdiction of the subject matter of this action is vested in the Securities and Exchange Commission.

SIXTH DEFENSE

23. The Court lacks subject matter jurisdiction of the SECOND and THIRD causes of action.

WHEREFORE, defendant New York Stock Exchange, Inc.
demands judgment dismissing the second amended complaint with
costs and disbursements.

MILBANK, TWEED, HADLEY & McCLOY

By William E. Jackson
(A member of the firm)
1 Chase Manhattan Plaza
New York, N.Y. 10005
Attorneys for defendant
New York Stock Exchange, Inc.

ANSWER OF BACHE & CO., INC. AS ILLUSTRATIVE OF ANSWER
OF ALL BROKER DEFENDANTS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x

L. JOHN JACOBI and ROBERT GAMBERA, et al.,:

Plaintiffs, :

-against- : 70 Civ. 3152

BACHE & CO., et al., :

Defendants. :

----- x

ANSWER OF DEFENDANT BACHE & CO.
INCORPORATED TO SECOND AMENDED COMPLAINT

Defendant Bache & Co. Incorporated ("Bache"), by its attorneys, Sullivan & Cromwell, for its answer to the second amended complaint herein:

1. Denies each and every allegation of paragraphs 1, 2, and 22, except admits that the plaintiffs purport to bring this action pursuant to the statutory provisions cited in said paragraphs.

2. Denies each and every allegation of paragraph 3 as to Bache, except admits that it transacts business within this District; and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph as to the other defendants.

3. Denies each and every allegation of paragraphs 4, 8, 9, 10, 11, 12, and 13.

4. Answering paragraph 5, denies the existence of any conspiracy or concert of action involving Bache, and denies knowledge or information sufficient to form a belief as to the truth of the other allegations of said paragraph.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, except admits that Bache is a Delaware corporation; and denies that it transacts business at 36 Wall Street, New York, New York.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, except admits that Bache is a member firm of the New York Stock Exchange and a member of the Association of Stock Exchange Firms.

7. Denies each and every allegation of paragraph 14 as to Bache, except admits that it engages in the purchase and sale of securities, both on public exchanges and in the over-the-counter market, as broker; admits that it maintains offices in several states of the United States and in some foreign countries; admits that it is a member firm of the New York Stock Exchange and other Exchanges; and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph as to the other defendants.

8. Denies each and every allegation of paragraph 15 as to Bache, except admits that on occasion it acts on behalf of customers in the purchase or sale of securities on public exchanges or in the over-the-counter market and receives a commission based on the amount of the purchase or sale; admits that it pays a commission based on a percentage of its own commission to certain of the securities representatives in its employ for their services in connection with the purchase or sale of securities; and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph as to the other defendants.

9. Denies each and every allegation of paragraphs 16, 19, 20, 21, 24, and 26 as to Bache; and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraphs.

10. Denies each and every allegation of paragraph 17 as to Bache, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph as to the other defendants, except admits that on April 2, 1970, the New York Stock Exchange adopted a service fee of \$15 or 50% of the applicable commission, whichever was the lesser, on orders of 1,000 shares or less; and admits that this service fee is still in effect.

11. Denies each and every allegation of paragraph 18 as to Bache, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph as to the other defendants.

12. Answering paragraphs 23 and 25, repeats and realleges its answers to the paragraphs incorporated therein by reference.

FIRST AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

14. The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

15. Pursuant to its duty under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.), the New York Stock Exchange has adopted rules, to which its members and member organizations are bound to adhere, relating to the

payment to securities representatives of commissions and other remuneration, including any portion of the service charge effective since April 2, 1970, with respect to transactions in securities listed on the Exchange. Neither the adoption of said rules by the Exchange nor the adherence thereto by its members and member organizations may be the subject of an antitrust claim by reason of the provisions of said Act.

FOURTH AFFIRMATIVE DEFENSE

16. The establishment of the service charge effective since April 2, 1970, the rules and regulations pertaining thereto adopted by the New York Stock Exchange and the adherence thereto by its members and member organizations are within the scope and carry out the purposes of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) and are therefore justified and reasonable in answer to the assertion of an antitrust claim.

FIFTH AFFIRMATIVE DEFENSE

17. Since the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) provides for review and revision by the Securities and Exchange Commission of the New York Stock Exchange's rules, among other things, relating to the payment to securities representatives of commissions and other remuneration, exclusive jurisdiction of the subject matter of this action is vested in the Securities and Exchange Commission.

SIXTH AFFIRMATIVE DEFENSE

18. Since the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) provides for review and revision by the Securities and Exchange Commission of the New York Stock Exchange's rules, among other things, relating to the payment

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to securities representatives of commissions and other remuneration, primary jurisdiction of the subject matter of this action is vested in the Securities and Exchange Commission.

SEVENTH AFFIRMATIVE DEFENSE

19. The claims are barred by the applicable statutes of limitations.

WHEREFORE, defendant Bache & Co. Incorporated demands judgment dismissing the amended complaint, together with the costs and disbursements of this action, including counsel fees.

SULLIVAN & CROMWELL

By Michael M. Hanover
(A Member of the Firm)
Attorneys for Defendant
Bache & Co. Incorporated
48 Wall Street,
New York, New York 10005
HANOVER 2-8100

October 22, 1971

ONLY COPY AVAILABLE

MEMORANDUM ENDORSEMENT DATED OCTOBER 12, 1971
mcbr 1 RE MOTION FOR CLASS CERTIFICATION

42 A

L. John Jacobi and Eugene Geisz, etc.

v.

70 Civ 3152

Bache & Co. Inc. et al.

New York, October 12, 1971
Room 1305 - 11:30 a.m.

- - -

MEMORANDUM ENDORSEMENT

MOTION NO. 122 OF SEPTEMBER 28, 1971 CALENDAR

RYAN, J. (orally):

Plaintiffs' motion for leave to serve an amended complaint is granted. It will drop Eugene Geisz as a named plaintiff and it will leave L. John Jacobi and Robert Gambera as the only named plaintiffs and the representatives of the class.

I find that there is a prima facie showing that Jacobi and Gambera will fairly and adequately represent the class.

The plaintiffs' claims were considered on December 9, 1970 by Judge Mansfield in prior proceedings.

The first amended complaint as filed alleges in the first three counts and seeks judgments on claims alleging unlawful conspiracy by the broker defendants and the Association of Stock Exchange Firms in violation of federal anti-trust, state and common law. Here it is alleged that

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defendants conspired and did by joint unlawful act reduce the commission rates which defendants were paying the securities representatives in their employ. The fourth, fifth and sixth counts allege similar acts and conspiracy not to pay commissions to their securities representatives based on a fee of service charge, which, beginning in March, 1970, the defendants added to the commission they charged customers for executing orders. The amended complaint now filed drops the first three counts above enumerated and alleges only Counts 4, 5 and 6, and three defendants, to wit, Blair & Company, Shields & Company and The First Boston Corporation are dropped as party defendants and as to them this action is discontinued without prejudice and without costs.

It is recognized by the parties that this is a class action under Rule 23 of the Federal Rules of Civil Procedure. I find that the prerequisites to class action enumerated in Rule 23(a) are present and that the action patently comes within one of the three categories of class actions of Rule 23(b).

It appears that the number of defendants' employees are readily defined and ascertainable, and are not so numerous as to make notice of the pending action difficult or impracticable. There are questions of fact and law common

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to the class.

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Due process requires that notice be given to the class before the entry of an order declaring this to be a class action. *Eisler v. Carlisle and Jacqueline*, 391 F. 2d 555, 554 (2d Cir. 1968).

The complaint seeks injunctive relief and money damages. A decree and judgment would be operative against all members of the class. As to each individual member of the class, the damages recoverable are to be ascertained by mathematical calculations. There remains but a single question and that is whether any member of the class should be afforded an opportunity to "opt out," or whether all should be bound by the final judgment in this action.

I agree with plaintiffs that this action should be maintained as a class action under Rule 23(b)(1). I find that to permit any member of the class to "opt out" might lead to conflicting and varying judgments in separate actions filed by individual members of the class. Rule 23(c)(2) which provides for opting-out of class members applies only to Rule 23(b)(3) class actions. Upon notice that this action is to be maintained as a class action, any party objecting to being bound by the final judgment will have a further opportunity to be heard. (*C.F. Van Gemert v Boeing Company*, 259 F. Supp 125 (SDNY 1966). This would afford ample

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opportunity to the attorneys for Harris, Upham & Company, Inc. to depose Robert Gambera as to his qualification and standing to fairly and adequately represent the class on whose behalf this action has been filed. It would also permit Delafield & Delafield, Inc. opportunity to dismiss this action as to them and as to Vincent Broderick, Esq. as liquidator of said firm.

I will sign orders consistent with the foregoing holdings, and direct that they be submitted.

October 12, 1971

Sylvester J. Ryan
Sylvester J. Ryan,
USDJ

I (We) hereby certify that the foregoing is a true and accurate transcription to the best of my (our) knowledge and belief from my (our) stenographic notes of this proceeding.

M. J. Ryan
Official Court Reporter
U. S. District Court

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ORDER DATED NOVEMBER 1, 1971 CERTIFYING CLASS AND
PROVIDING FOR GIVING OF NOTICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

46A
ONLY COPY AVAILABLE

L. JOHN JACOBI and ROBERT GAMBERA,
etc.,

Plaintiffs,

-against-

BACHE & CO., et al.,

Defendants.

:
:
: 70 Civ. 3152

: ORDER

:

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: X

Plaintiffs having moved this Court for an order pursuant to Rule 23, F.R.C.P., determining that this action may be maintained as a class action, and the motion having come on to be heard on October 7, 1971,

NOW, upon the pleadings on file, and after hearing Charles Sovel, Esq., for plaintiff in support of said motion for class action determination, and upon the consent of counsel for all defendants, and due deliberation having been had, it is hereby

ORDERED that pursuant to Rule 23(c)(1), F.R.C.P., this action is conditionally determined to be a class action within the provisions of Rule 23(a) and (b) (1), and that the members of said class are all securities representatives (sometimes called registered representatives or account executives) employed by the defendant broker-dealers during the period April 2, 1970 through June 25, 1971, who were compensated at least in part by commissions on securities transactions effected by them; and it is further

ORDERED that a Notice, in the form annexed hereto, shall be published by the plaintiffs in a two-column form,

publication shall be made on or before December 7, 1971; and that within 10 days after completion of such publication the plaintiffs shall file with the Clerk of the Court an affidavit of publication from each of said newspapers; and it is further

ORDERED that copies of said Notice shall be prepared by plaintiffs and delivered to the broker-dealer defendants on or before November 16, 1971; said Notice shall be distributed to each member of the class by December 7, 1971, which distribution shall be effected by each broker-dealer defendant to the members of the class now or previously employed by it. In the case of former employees who are members of the class, each broker-dealer defendant shall distribute the Notice by mailing a copy to them at their last known addresses, as shown on the books of said broker-dealer. Within 10 days after said distribution, each broker-dealer defendant shall file with the Clerk of the Court an affidavit describing the means employed by it in distributing said Notice and a list of names and addresses of persons to whom the Notice was mailed; and within 45 days after said distribution, each broker-dealer defendant shall file an affidavit listing those members of the class to whom the Notice was mailed but returned undelivered; and both such lists shall remain sealed subject to further Order of this Court; and it is further

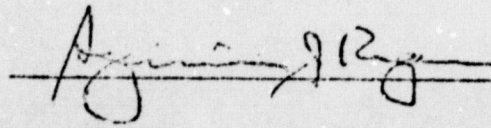
ORDERED that the broker-dealer defendants shall distribute said Notice without explanation, recommendation or comment until further order of this Court; and it is further

ORDERED that any member of the class desiring to intervene in this action must file an appropriate notice on or before January 6, 1972, and thereafter, within 60

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days of the filing of such notice, must obtain the consent of the parties to this action to such intervention or must move the Court pursuant to Rule 24, F.R.C.P., for permission to intervene.

Dated: New York, New York
November 12, 1971


U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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----- x
L. JOHN JACOBI and ROBERT GAMBERA, individu- :
ally, and on behalf of all other securities :
representatives similarly situated, :

Plaintiffs, :

-against- :

: 70 Civ. 3152

BACHE & CO.; WALSTON & CO., INC.; E. F. :
HUTTON & CO., INC.; THOMSON and McKINNON :
AUCHINCLOSS, INC. (formerly THOMSON & :
McKINNON, INC.); HORNBLLOWER and WEEKS - :
HEMPHILL, NOYES; LOEB, RHOADES & COMPANY; :
TUCKER, ANTHONY & R. L. DAY; HENTZ & CO.; :
DELAFIELD & DELAFIELD; HARRIS, UPHAM & :
CO. INC.; DOMINICK & DOMINICK, INC.; :
SHEARSON HAMILL & CO.; HALL & STIEGLITZ, :
INC.; ORVIS BROTHERS & CO.; DEMPSEY TEGLER :
& CO., INC; GLOBE-ROGAN, WILLIAM R. STAATS, :
INC.; FRANCIS I. DUPONT & CO; GOODEODY & :
CO; HIRSCH & CO; PEAR, STEARNS & CO; LEHMAN :
BROS. INC; KIDDER, PEABODY & CO. INC; R. W. :
PRESSPRICH & CO, INC; STONE & WEBSTER :
SECURITIES CORP.; DEAN WITTER & CO. INC; :
W. E. HUTTON; A. G. EDWARDS & SONS, INC; :
REYNOLDS & CO; PAINE, WEBBER, JACKSON & :
CURTIS; SCHEINMAN, HOCKSTEIN & TROTTA, :
INC; PRESSMAN, FROELICH & FROST, INC; NEW- :
BURGER, LOEB & CO.; BAUSCHER, PIERCE :
SECURITIES CORP.; OPPENHEIMER & CO.; :
STEINER, ROUSE & CO. INC; L. F. ROTHSCHILD :
& CO.; SPENCER TRASK & CO. INC; SMITH, :
BARNEY & CO. INC; MERRILL LYNCH, PIERCE, :
FENNER & SMITH, INC; THE ASSOCIATION OF STOCK :
EXCHANGE FIRMS AND THE NEW YORK STOCK :
EXCHANGE, :

Defendants. :
----- x

NOTICE OF CLASS ACTION

TO: Securities Representatives Employed by
the Defendant Brokerage Houses

NOTICE IS HEREBY GIVEN that, pursuant to an Order
dated November , 1971, of the United States District Court
for the Southern District of New York (hereinafter called
the "Court") by Hon. Sylvester J. Ryan, United States
District Judge, it has been determined that this action may

proceed as a class action under Rule 23(a) and (b)(1) of the Federal Rules of Civil Procedure, and that the action may be maintained on behalf of all persons who were employed by the brokerage house defendants as securities representatives (sometimes called registered representatives or account executives) during the period April 2, 1970 through June 25, 1971, and who were compensated at least in part by commissions on securities transactions effected by them.

THE PARTIES

Plaintiffs L. John Jacobi and Robert Gambera, as employees of two of the defendant brokerage houses during the period April 2, 1970 through June 25, 1971, have brought this action on behalf of themselves and on behalf of all other securities representatives similarly situated.

The defendants are registered broker-dealers or brokerage houses, The Association of Stock Exchange Firms and The New York Stock Exchange.

NATURE OF THE ACTION

This action was commenced by one Sam Cordova on July 23, 1970. By subsequent order of the Court L. John Jacobi was substituted as plaintiff; and later, Robert Gambera was permitted to intervene as an additional plaintiff.

The complaint charges that the defendant brokerage houses, acting in concert with the Association of Stock Exchange Firms and The New York Stock Exchange, conspired to withhold paying commissions to the securities representatives employed by the defendant brokerage houses on the surcharge which the Securities and Exchange Commission permitted to be imposed on purchases of securities of 1,000

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of the applicable commission, whichever was the lesser, which went into effect on April 2, 1970. The complaint seeks to have this practice declared illegal under the Federal anti-trust laws and state and common law principles, to have the defendants permanently enjoined from continuing to withhold commissions based upon said surcharge from the securities representatives who are members of the class, and to recover damages.

The defendants deny that any refusal to include amounts received as a result of the imposition of the surcharge in determining commissions paid to securities representatives was the result of any conspiracy; and some of the defendants state that they increased their representatives' commissions as soon as permission to impose the surcharge was secured. All defendants allege that all actions by the broker-dealer defendants were taken to conform to the orders of and conditions imposed by the Securities and Exchange Commission in approving said surcharge. The defendants further contend that certain rules of the New York Stock Exchange relating to service fees may not be the subject of antitrust claims, and that exclusive and primary jurisdiction to determine this issue rests with the Securities and Exchange Commission. Defendants also contend that the claims alleged in the complaint involve a dispute between employees and employers concerning the terms and conditions of employment, which are not subject to the anti-trust laws; this contention was the basis of a prior motion to dismiss the complaint, which was denied by the District Court.

Reference is made to the pleadings in this action, which have been filed with the Court, for a complete statement of their allegations. The pleadings and all other papers in the action may be examined in the Office of the

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Clerk of the Court, United States Courthouse, Foley Square.
New York, New York.

EFFECT OF THE CLASS ACTION
DETERMINATION

The final judgment entered in this action will be binding upon all members of the class.

Any person desiring to intervene in this action must file an appropriate notice of intention with the Clerk not later than January 6, 1972, with copies to the following:

Abraham E. Freedman, Esq.
Attorney for Plaintiffs,
36 Seventh Avenue,
New York, New York 10011

Messrs. Milbank, Tweed,
Hadley & McCloy,
Attorneys for Defendant
The New York Stock Exchange,
1 Chase Manhattan Plaza
New York, New York 10005

Any person filing a notice of intention to intervene must, within 60 days after the filing of such notice, obtain the consent of the above-named counsel to their intervention or must file a motion pursuant to Rule 24 of the Federal Rules of Civil Procedure for permission to intervene. The Court has found that the present plaintiffs will fairly and adequately represent the class, and the interest of those members of the class who do not intervene will be represented by the present plaintiffs.

The giving of this notice should not be understood as an expression of any opinion by the Court as to the merits of any claim or defense asserted in this lawsuit. It is being distributed by the parties without explanation, recommendation or comment as to what action any member of the class should take with respect thereto.

Inquiries with respect to this notice should be addressed to one or both of the attorneys listed above.

John Livingston,
Clerk of the Court,
United States District Court
for the Southern District of
New York

Dated: New York, New York

EXCERPT FROM TRIAL PROCEEDINGS
PLAINTIFFS' OFFERS OF ADMISSIONS, EXHIBITS
AND STIPULATIONS

15 MR. SOVEL: If your Honor please, I would like
16 first to offer into evidence as Exhibit No. 61 -- and the
17 reason I am starting at 61 is that many of the exhibits were
18 numbered beginning with No. 1 at the depositions -- the
19 constitution and rules and regulations of the New York
20 Stock Exchange, Inc.

21 I might say there has been a stipulation between
22 counsel with respect to the physical production of the
23 rules and regulations. We have copies made of certain
24 rules and regulations and constitutional provisions as they
25 appear in the book published by Commerce Clearing House for

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2 each of the years 1970, 1971, and 1972 and 1973. However,
3 we would request your Honor to deem as the exhibit the
4 actual constitution and by-laws for the entire period in
5 question, being 1970 to 1973, with all counsel having the
6 right to refer to any one of those constitutional provisions
7 or any rule or regulation, subject only to providing your
8 Honor with an appropriate copy of it.

9 On that basis I offer in these excerpts as
10 Exhibit 61 as part of the entire exhibit.

11 THE COURT: Is there any objection, gentlemen?

12 MR. JACKSON: A point of clarification, your
13 Honor. I am not clear as to exactly what is being offered
14 at this time.

15 MR. SOVEL: Documents provided to me by Mr. Brooks,
16 which are copies of certain provisions of the constitution
17 and of the by-laws as they appear in the Commerce Clearing
18 House booklet issued for each of the years 1970, 1971,
19 1972, and 1973.

20 THE COURT: I gather that these are not complete.
21 You said "certain."

22 MR. SOVEL: Yes. They are the ones that we
23 conceive at this point to be relevant, but we are not at
24 this point precluding anyone from referring to any other
25 portions of the constitution or the rules and regulations.

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2 THE COURT: All right. May I suggest, if you
3 would, that you take a moment and show them to counsel at
4 the rear table, and if there is no objection, it being
5 understood that these are portions and not complete, and it
6 being further understood that anyone who wishes to introduce
7 on his own behalf or his client's behalf additional portions
8 of the constitution and rules and regulations of the Stock
9 Exchange may do so under what I would call a doctrine of
10 completeness.

11 Would that be fair?

12 MR. SOVEL: Fine. I might say these were furnished
13 to me by counsel for the New York Stock Exchange.

14 THE COURT: I would think there is no question
15 about authenticity. I would think the question that may
16 arise would be as to their relevance and materiality.

17 MR. JACKSON: No objection, your Honor.

18 MR. SOVEL: I offer it as Exhibit 61.

19 THE COURT: Anyone else wish to see it, or have
20 any objection?

21 MR. JACKSON: If your Honor please, might I suggest
22 that since there are four separate exhibits in this
23 exhibit, they be given separate numbers. In other words,
24 these are basically the same provisions during four
25 different periods.

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2 THE COURT: May I suggest we will use the lettering
3 system here 61A, -B, -C, and -D. Is that satisfactory,
4 gentlemen?

5 MR. BROOKS: Your Honor, let me point out that it
6 is not clear from those documents themselves which year
7 they are from, so that it might be best to indicate right
8 on them in pencil.

9 MR. SOVEL: I have marked them on the front page
10 as to which year of the book they were taken from.

11 THE COURT: All right.

12 I will look at them for a moment and see if they
13 are clear to me.

14 (Plaintiffs' Exhibits 61A, -B, -C, and -D received
15 in evidence.)

16 THE COURT: Looking through them quickly, 61A
17 appears to be up through 1970; 61B through 1971; 61C
18 through 1972; and 61D at least goes into 1973. I don't
19 know if that is cumulative and up to date, Mr. Sovel.

20 MR. SOVEL: I don't believe it is, nor was it
21 intended as such, your Honor. It is from the booklet that
22 came out in 1973 as they existed, I believe, at the
23 beginning of that year.

24 THE COURT: The Court would note finally that these
25 four documents appear to be cumulative and, because of

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2 that, there is a certain carryover from exhibit to exhibit.

3 Those are received with no objection.

4 MR. SOVEL: If your Honor please, I would next
5 like to offer into evidence certain admissions from the
6 answer filed by the defendant New York Stock Exchange. I
7 would first like to offer the following admission from
8 paragraph 5 of their answer, in which it is admitted that
9 plaintiff, L. John Jacobi, was employed as a registered
10 representative for approximately fourteen years prior to
11 May 1970 by Goodbody & Co. and that plaintiff, Robert
12 Gambera, was employed by defendant Glore-Forgan, William R.
13 Staats, Inc., in the capacity of a securities representative
14 from January 1, 1969, to August 1, 1969, and was so employed
15 in a similar capacity by the defendant Walston & Company
16 for the period August 1969 to July 1971.

17 I offer that admission into evidence.

18 I next offer from paragraph 6 of the answer. In
19 paragraph 6 they admit the allegation of paragraph 6 of
20 the complaint, except that at that time they deny that the
21 Exchange was not a corporation.

22 Paragraph 6 of the complaint in essence alleged
23 that each of the defendants, the broker defendants, was a
24 corporation organized and existing under and by virtue of
25 one of the laws of the United States and was doing business

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2 in this district and listed certain addresses, which I
3 would respectfully incorporate by reference rather than
4 reading all the names. I offer that in evidence.

5 MR. JACKSON: Just a point of technical accuracy.
6 The allegation of paragraph 6 of the complaint, which is
7 admitted in the Exchange's answer, is that each of the
8 broker defendants named is a corporation or partnership.

9 MR. SOVEL: Yes, sir. Thank you.

10 I next offer from paragraph 7 of the answer, which
11 is admitted, that the Exchange furnishes facilities for
12 transactions by its members and member organizations in
13 securities listed on the Exchange, regulates certain con-
14 duct of its members and member organizations, maintains its
15 place of business at 11 Wall Street, New York, New York, and
16 is doing business within this district.

17 I offer that admission into evidence.

18 I next offer from paragraph 11 of the answer the
19 admission that each of the broker defendants acts on
20 behalf of customers in the purchase or sale of securities
21 on public exchanges or in the Over the Counter market, and
22 for such services receives a commission based on the amount
23 of the purchase or sale. I offer that admission into
24 evidence.

25 MR. SCHWARTZ: I object to it on the part of my

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2 clients, your Honor, because regretfully I must say it is
3 not accurate. On Over the Counter transactions in each and
4 every case my clients receive a commission. That is not
5 accurate.

6 MR. SOVEL: It is admission at least on behalf of
7 the New York Stock Exchange, and I would not offer it on
8 the Over the Counter transactions, because it is not really
9 relevant to this proceeding anyhow.

10 THE COURT: So you are going to eliminate that
11 portion of your offer which seeks to make this an admission
12 of member firms relative to Over the Counter transactions.

13 MR. SOVEL: Yes, sir.

14 THE COURT: You are excluding that.

15 MR. SOVEL: Yes, sir.

16 THE COURT: Basically you are accepting Mr.
17 Schwartz's objection?

18 MR. SOVEL: Not so much am I accepting the
19 objection; it is not relevant to the proof I need in the
20 case. I was trying to read the whole admission, though,
21 and it can be excluded as far as that aspect is concerned.

22 THE COURT: As to all of the member firms?

23 MR. SOVEL: As to all the defendants, right.

24 Finally, from paragraph 13 of the answer,
25 admission that on April 2, 1970, with the approval of the

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Securities and Exchange Commission, the Exchange adopted a service fee of \$15 or 50 percent of the applicable commission, whichever was the lesser, on orders of 1000 shares or less, and that said service fee is still in effect, although scheduled to terminate upon the effectiveness of a new commission schedule approved by the Securities and Exchange Commission. I would offer that with the modification that the service fee has now terminated and did terminate, I believe, on March 24, 1972. I offer that as an admission.

THE COURT: Let me hear that one again, Mr. Reporter, please.

(Record read)

MR. SOVEL: Next, your Honor, I offer certain admissions from the answers to interrogatories filed by defendant New York Stock Exchange. I offer, first, the answer to Interrogatory No. 5. Pardon me, I withdraw that, since that has already been admitted.

From Interrogatory No. 6: To the best of your knowledge and information, set forth the total amount that was collected by your member firms by reason of imposition of the service fee during the period it was in effect.

The answer was as follows: \$533,632,028, excluding the year 1972, for which year the Exchange does not have

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2 sufficient data to answer.

3 I offer that, and I call to your Honor's attention
4 that the time, the date of these answers, is November 22,
5 1972.

6 MR. JACKSON: If your Honor please, I object to the
7 offer, on the grounds that it is irrelevant and immaterial
8 to the issues in this litigation, for the reason that the
9 interrogatory requests the total amount collected by your
10 member firms. At this time there were well over 500 member
11 firms of the Exchange, and the figure given in the answer
12 to Interrogatory 6 includes the total revenues derived by
13 the service fee for all of those or by all of those 500-plus
14 member firms.

15 This action is brought against the Exchange, and
16 I don't know exactly but some 30 to 40 member firms alone,
17 so that there are well over 500 member firms who are not
18 defendants in this action, and what the other member firms
19 may have derived in revenues has nothing to do with the
20 issues in this case against a handful of member firms.

21 THE COURT: Do you, Mr. Sovel, have the figures
22 insofar as they relate to those defendants presently
23 before this Court?

24 MR. SOVEL: If your Honor please, the next
25 interrogatory we do have information on, as it was

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1 available at the time of the answers with respect to the
2 defendants in the action. However, I offer the total figure
3 as being necessary to understanding other parts of the
4 testimony which will come in relating to the total amounts
5 assumed that would be collected by the service fee on an
6 industrywide basis.
7

8 THE COURT: Since I am sitting nonjury and
9 recognize the point of Mr. Jackson's objection, I am going
10 to take the answer to that particular interrogatory for
11 what it is worth, recognizing that I have before me only
12 a fraction of the total number of member firms, and I
13 suppose the best that can be said for that number is that it
14 is roughly representative of the scope of the infusion that
15 was considered necessary into the securities industry as a
16 whole in order to meet certain emergency situations as they
17 arose.

18 Needless to say, were you successful in this
19 action, that figure would not be the measure of your
20 damages against these defendants. I think you accept that;
21 right?

22 MR. SOVEL: Absolutely.

23 THE COURT: I will take it on the basis that it
24 does provide me with a certain degree of background and
25 information relative to the problem as a whole.

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2 MR. SOVEL: I would next offer, your Honor,
3 paragraph 7 of the interrogatories. Paragraph 7 stated:
4 To the best of your knowledge and information, state the
5 total amount collected by each of the broker defendants in
6 this action by reason of the service fee during the period
7 that it was in effect.

8 Their answer to that was: "See Exhibit A attached."

9 I would like to have marked as an exhibit and
10 offer into evidence Exhibit A, which I think should now
11 bear No. 62, and I so offer it.

12 MR. JACKSON: If your Honor please, I will object
13 to that portion of Exhibit A which contains data relating
14 to firms which have been dismissed from this action, and I
15 note that there are several such as Shields and First Boston
16 and perhaps others in this exhibit.

17 THE COURT: Mr. Sovel, I would assume that your
18 offer of this exhibit, which was prepared probably before
19 the dismissal, would be limited only to those firms presently
20 before the Court.

21 MR. SOVEL: Yes, your Honor.

22 THE COURT: On that understanding and with those
23 firms who have been dismissed from the action being
24 eliminated, I will receive the exhibit.

25 I think this might be a good time, gentlemen, for

21 (Plaintiff's Exhibit 62 was received in evidence.)

22 THE COURT: There is no objection to that, except
23 the limited objection you made. Is that correct?

24 MR. JACKSON: No other objection, your Honor, yes.

25 THE COURT: Basically, the exhibit has been re-

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2 drawn, and withdrawn at least in part as it relates to
3 those who are no longer in the case.

4 MR. JACKSON: Yes, your Honor.

5 MR. SOVEL: If your Honor please, I would next
6 like to offer the answers to Interrogatories Nos. 24 and
7 25, and I would like to read both interrogatories first,
8 because their answer is the same in both cases.

9 No. 24 was: Identify every service charge adopted
10 by the New York Stock Exchange pursuant to Article 15,
11 section 9, of its constitution, and set forth the following
12 information:

13 (a) The nature and amount of the service charge.

14 (b) The nature of the service for which the charge
15 was instituted.

16 (c) The dates during which each such service
17 charge was in effect.

18 That ended No. 24.

19 No. 25 was: Set forth the history of Article 15,
20 section 9, of the constitution of the New York Stock
21 Exchange, stating when each of its predecessors was
22 first adopted, the nature of any amendments thereto, with
23 the dates of said amendments, and the precise language of
24 Article 15, section 9, as amended, on each occasion.

25 Now, the answer to both interrogatories was: "See

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2 Exhibit B attached."

3 Exhibit B is a document of, I think, 11 pages,
4 10 or 11 pages, describing the history of the service
5 charges of the information submitted in response to this
6 interrogatory. Rather than read it in its entirety, I
7 would just like to offer Exhibit B as an exhibit in this
8 case as Exhibit 63.

9 I so offer it.

10 THE COURT: All right, show it to the other side
11 as soon as it has been marked for identification. If there
12 is no objection, I will receive it.

13 (Plaintiffs' Exhibit 63 marked for identification.)

14 MR. SOVEL: If your Honor please, if you could
15 indulge us for just one minute.

16 THE COURT: That is why I requested that these
17 documents be shown to the other counsel. If there is a
18 problem, let us iron it out now.

19 (Pause)

20 MR. JACKSON: No objection.

21 MR. SOVEL: If your Honor please, Mr. Jackson
22 has indicated no objection. I don't know about any other
23 counsel.

24 THE COURT: Very good. If anyone else wants to
25 look at the document, Mr. Jackson looked at it carefully,

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he may do so. Hearing no one and since this is a history which I understood was prepared by the defendant in response to some of plaintiffs' interrogatories, it will be received.

(Plaintiffs' Exhibit 63 received in evidence.)

THE COURT: This was Exhibit B, I gather, attached to those answers to interrogatories.

MR. SOVEL: Yes.

THE COURT: I gather the one which I see on the next to the last page, which runs over to the last page, is the one with which we will be primarily concerned, which commenced in April of 1970. Is that correct?

MR. SOVEL: That is correct, your Honor.

THE COURT: My understanding is that no service charges were instituted subsequent to that time, at least up to the date of these answers to interrogatories.

MR. SOVEL: None that I know of that would have any bearing on the lawsuit.

THE COURT: Very good.

MR. SOVEL: If your Honor please, I understand that some additional counsel have arrived who would like to make themselves known, so I will bow to them for a moment, if I may.

THE COURT: All right. If there are counsel who

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2 have appeared, let them step forward.

3 MR. LOVEJOY: Your Honor, my name is Lovejoy, and
4 I am from Simpson Thacher.

5 THE COURT: We were waiting for you.

6 MR. GROWNEY: My name is Growney; I am for Spencer
7 Trask.

8 THE COURT: Good. You are the two gentlemen we
9 were waiting for. Now we are complete.

10 Let the record reflect that the two gentlemen who
11 were not here at the outset, who I indicated would be
12 temporarily represented by the counsel for the Exchange
13 and the steering committee, are now here. That is Mr.
14 Growney, who represents the defendant Spencer Trask &
15 Co., Inc., and Mr. Lovejoy, of Simpson Thacher, representing
16 the defendants Lehman Bros. and Tucker Anthony.

17 Has anyone else come who wishes to note his
18 appearance before we resume?

19 Very well.

20 MR. SOVEL: May I proceed?

21 THE COURT: You may.

22 MR. SOVEL: If your Honor please, I would next
23 like to offer into evidence the following stipulation that
24 was entered into between myself and counsel for the New
25 York Stock Exchange. The stipulation reads as follows:

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It is hereby stipulated and agreed that if an appropriate witness were called he would testify as follows with respect to the makeup of the Board of Governors or Board of Directors of the New York Stock Exchange, Inc.

The testimony would be as follows, and I am quoting.

"During the period from March 26, 1970, through February 29, 1972, the governing body of the New York Stock Exchange was known as the Board of Governors. Effective March 1, 1972, their title was changed to Board of Directors. Prior to February 18, 1971, the New York Stock Exchange was organized as an unincorporated association. Effective February 18, 1971, the New York Stock Exchange became organized as a corporation under the Not For Profit Corporation Law of the State of New York.

"During the period from March 26, 1970, to March 24, 1972, the Board of Governors and subsequently the Board of Directors had thirty-three members, one of which was president, who was an employee, and twenty-nine of which were elected from representatives of member firms of the New York Stock Exchange and three public members elected by a majority of the other thirty members."

That ends the agreement as to what the testimony will show. I will offer the stipulation as an exhibit in

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2 the case as No. 64.

3 THE COURT: Is there any objection?

4 MR. JACKSON: No objection, your Honor.

5 (Plaintiffs' Exhibit 64 received in evidence.)

6 THE COURT: I see you left a place for me to so
7 order it, and I will do that now.

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PORTIONS OF DEPOSITION OF MR. DAVID D. HUNTOON

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pg 1

"Huntoon

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(Pause)

THE COURT: You may proceed.

MR. SOVEL: If your Honor please, I would now like to offer into evidence the testimony from the deposition of Mr. David D. Huntoon.

I thought for purpose of following it, if I could have my associate, Mr. Katz, act the part of the witness and read the answers while I read the questions-- I will advise everyone which portions I will be reading from --

THE COURT: That's agreeable.

MR. SOVEL: If your Honor please, I will begin on page 4 of the deposition.

For purposes of the record, the deposition was taken on February 8, 1972, at the offices of Messrs. Milbank, Tweed, Hadley & McCloy.

The witness David D. Huntoon was duly sworn and testified as follows -- I will now begin at page 5

"Q What is your name?

"A David D. Huntoon.

"Q Where do you live?

"A 45 Peaceable Street, Ridgefield, Connecticut.

"Q Mr. Huntoon, by whom are you employed?

"A By the New York Stock Exchange, Inc.

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"Huntoon

2 "Q And how long have you been employed by the New
3 York Stock Exchange, Inc.?

4 " SINCE MAY 1901.

5 "Q And in what capacity have you been employed by
6 them?

7 "A As part of the staff in the Department of Member
8 Firms.

9 "Q Has that assignment continued during the entire
10 period you have been with the New York Stock Exchange?

11 "A Yes.

12 "Q Now, when you referred to the staff of the
13 Department of Member Firms, could you explain what that is?

14 "A The Department of Member Firms is that portion
15 of the Exchange staff, which administers the Exchange's
16 rules as they bear on its member organizations as opposed
17 to the Department of Stock List, which administers the rules
18 relating to floor trading.

19 "Q Are those the three departments of the Exchange
20 or what?

21 "A Those are the three principal operating departments
22 who administer the Rules of the Exchange. There is also
23 a fourth, which is smaller, the office of the secretary
24 which administers the rules relating to the admission of its
25 members and allied members and the purchase and sale of seats.

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"Huntoon

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2 "Q Does the Department of Member Firms have a head
3 of the Department?

4 "A Yes.

5 "Q Who is that?

6 "A That is Mr. Robert M. Bishop.

7 "Q How many men are there in the Department?

8 "A I think we currently have 235, give or take 4 or 5.

9 "Q Do you have any title or rank within the Department?

10 "A Yes. I am an Associate Director of the Department.

11 "Q Where does that put you in relation to Mr. Bishop?

12 "A I report directly to him.

13 "Q How many Associate Directors are there?

14 "A Three.

15 "Q Who are the other Associate Directors?

16 "A One is Fred J. Stock, Jr. and another is Stuart
17 K. Nelson.

18 "Q I take it that the three of you are directly
19 under Mr. Bishop?

20 "A That is correct.

21 "Q You have staffs working under you?

22 "A That is correct.

23 "Q Now, I take it that you are familiar with the
24 service fee, which is the subject of this lawsuit?

25 "A Yes, sir.

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"Huntoon

"Q Did you have anything to do with the procedures by which the service fee was proposed and adopted?

A Yes.

"Q When did you first have any contact with respect to the proposal to adopt the service fee?

"A In March 1970, at the time it was first thought of. If I may, the proper terminology as far as our Constitution and Rules are concerned is Service Charge.

"Q Who first thought of the service charge, to your knowledge?

"A I don't really know who first thought of it.

"Q Prior to March of 1970, had there been an Application of Proposal submitted by the Stock Exchange with respect to restructuring of commission rates?

"A Yes. A Preliminary proposal had been made in February of 1970 by the Exchange to the Securities Exchange Commission.

"Q Did you have anything to do with the preparation of that proposal?

"A Yes.

"Q What?

"A I worked with a consultant firm, National Economics Research Associates in developing the proposal, and I also worked for the Cost & Revenue Committee, which

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"Huntoon

2 is the Committee of the Board of Governors charged with
3 overseeing the development of the commission proposal.

4 "Q With respect to that proposal, when did the work
5 on that proposal first begin?

6 "A You're talking about the Commission Rate Proposal?

7 "Q Yes.

8 "A It is hard to pin down when it first began because
9 the Cost & Revenue Committee was continually in existence
10 from 1953 right through until the final proposal was adopted
11 in October 1971. The NERA People, the National Economic
12 Research, we retained, I think in 1969.

13 "Q That was going to be my next question, when they
14 were retained.

15 "A I think, I am not certain, but I think it was 1969.

16 "Q Did you have dealings with the NERA people?

17 "A Yes.

18 "Q With whom did you deal?

19 "A Well, from the top with Dr. Irwin Stelzer, who
20 is the President. With Mr. Herman Roseman. With Mr. Peter
21 Max.

22 "Q Were you the liaison between the Exchange and NERA?

23 "A No, not exclusively.

24 "Q You said, not exclusively. To some extent, I
25 would assume?

"A To some extent.

"Q Who else was involved?

"A Dr. William Freund, Vice-President of the Exchange and the Exchange's economist, Mr. Bishop to some degree. Also Mr. Haack, President of the Exchange.

"Q There came a time when NERA submitted a report to the Exchange, did there not?

"A Yes.

"Q And that report, in turn, was submitted to the SEC Commission?

"A Yes.

"Q That was prior to March of 1970, was it not?

"A Yes. I believe it was February 1970.

"Q Was it February when it was submitted to the Commission or February when you received the report from NERA?

"A My memory is that we submitted it to the Commission in 1970.

"Q Do you recall when you received it?

"A No. But it would be very hard to say when it was received. NERA was working under the guidance of the Cost & Revenue Committee and it wasn't something that was produced in a closet and suddenly handed fullblown to the Committee. It was developed under their guidance.

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2 "Q So during the period of time prior to February
3 1970, there had been consultations with NERA and you had
4 some idea what their plan could be prior to February 1970?

5 "A Yes. I would say that is true in a general way.
6 I don't know if the Committee, know what their finances
7 were going to be but we knew their general methodology.

8 "Q You referred to the Cost & Revenue Committee.
9 Who is the head of that committee and who were its members?

10 "I would say the period from June of 1969 to
11 March of 1970. The end of March 1970.

12 "A By March 1970, the Chairman was Mr. Ralph De
13 Nunzio. I don't recall when he became the Chairman. It
14 was probably before June 1969.

15 "Q How many men are there on that Committee or
16 how many members are there on that Committee?

17 "A I believe there are 17.

18 "Q Is Mr. De Nunzio an employee of the Exchange?

19 "A No, he is not.

20 "Q What is his relationship to the Exchange?

21 "A You are talking now or then?

22 "Q Now and then.

23 "A Mr. De Nunzio was then the Vice-Chairman of the
24 Board of Governors of the Exchange and today is the Chairman
25 of the Board of Governors.

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2 "Q Is he a paid employee of the Exchange in any
3 respect other than being on the Board of Governors?

4 "A NO, HE IS NOT.

5 "Q Were the members of the Committee during that
6 period employees of the Exchange?

7 "A Without wishing to characterize whether they
8 are employees or not and perhaps I should say this for
9 Mr. De Nunzio as well, I believe all Committee Members
10 are paid by the Exchange for the meetings they attend.
11 Mr. De Nunzio and the other members of the Committee are
12 people who are drawn from the industry.

13 "Q In other words, they are representatives of the
14 member firms of the industry, of the Exchange?

15 "A They are associated with member firms. I
16 wouldn't want to characterize them as representatives."

17 MR. SOVEL: Continuing now, your Honor, on
18 page 17, line 15:

19 "Q Now, how were you first advised that a proposal
20 would be submitted to add the surcharge?

21 "A I don't specifically recall how I was first
22 advised.

23 "Q Do you recall when you were advised?

24 "A Yes. Around March 17.

25 "Q Do you recall how you were advised?

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"Huntoon

"A No, I don't. To tell you the honest truth,
I don't recall precisely.

Q Do you know by whom you were advised?

"A No.

"Q Do you recall what you were requested to do with
respect to the surcharge, if anything?

"A Yes. I was requested to do the drafting of the
rule changes.

"Q And you don't recall who asked you to do that
redrafting?

"A Originally, no, although I do recall that I
worked with both Mr. Arning, who was then the Operation
Vice-President of the Exchange and Mr. Cunningham, who was
then the Executive Vice-President on this question. Which
one of them initially told me to do it, I'm not certain.

Q Now, do you know whether there was any consultation
between representatives of the Exchange and the SEC prior
to the proposal actually being submitted for the surcharge,
any consultation with respect to the surcharge?

"A Yes, there was a visit to the SEC by Exchange
officials two days before the meeting of the Board of
Governors, at which time the surcharge was approved in
principle.

"Q Now, do you know when that was, what date?

2 "A I believe that was March 17th.

3 "Q That would be the day you were first advised
4 as well or would it have been prior to when you were first
5 advised?

6 "A It would have been around the time I was first
7 advised. Let me clarify that answer by saying that you
8 asked me about a service charge?

9 "Q Or a surcharge, whatever you want to call it.

10 "A I prefer to call it a service charge, which
11 was a means of supplying interim financial relief to the
12 member firm community at the time when it was very urgently
13 needed. That relief was originally contemplated or at one
14 time contemplated as a change in the commission rate schedule
15 and indeed, that concept is still true and if we have a
16 commission rate schedule, which has been approved by the
17 SEC and which, when implemented, will replace the service
18 charge. So it is a little difficult for me to distinguish
19 precisely when the service charge idea came up, but the
20 idea of greater revenue for our member firms was certainly
21 there for many months before July 1970.

22 "Q I take it, what you are telling me, you felt a
23 commission increase was necessary and you felt it was
24 necessary for a period substantially before March 1970?

25 "A Yes, because the submission to the SEC, what I

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"Huntoon

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recall is February, was for an increase in commissions.

"Q And the surcharge was to provide income in the same amount -- pardon me, the service charge was to provide income just as the increase of commission was to provide revenue for the firms?

"A Yes. The service charge was a way to get interim relief, while the restructuring of the commission rate was going forward. That was obviously going to be a task taking many months. The situation in the member firm community at that time was serious and it was felt that we needed interim aid immediately.

"Q My question to you is simply this, Mr. Huntoon. The surcharge was to serve the same purpose as the commission rate increase. It was not to pay for any new or different service?

"A The service charge was generally for the purpose of increasing the revenues to member firms when increased revenue was needed.

"Q And not in payment for any other service to be rendered by any of the member firms?

"A I would say that is correct.

"Q You mentioned that representatives of the Exchange met with representatives of the SEC two days prior to the Board of Governors' meeting?

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"Huntloot"

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1 "A Yes, sir.

2 "Q Do you know the date of the Board of Governors'
3 meeting to which you are referring?

4 "A That meeting took place on March 19th.

5 "Q So that it would be your recollection that
6 representatives of the Exchange met with representatives
7 of the Commission on March 17?

8 "A Yes, sir.

9 "Q Who are the representatives of the Exchange to
10 whom you are referring?

11 "A I don't know. I was not one of them. I believe
12 that Mr. Haack was one."

13 MR. SOVEL: Your Honor, we will continue on
14 page 30:

15 "Q I believe you have in your file a letter dated
16 March 16, 1970, from the Exchange to the SEC. Could you
17 produce that, please?

18 "A Yes, sir."

19 MR. SOVEL: If your Honor please, I request
20 counsel for the New York Stock Exchange produce the exhibit
21 that was marked as Exhibit 1 at that time.

22 THE COURT: That's a letter dated March 16, 1970,
23 from the Exchange to the Commission?

24 MR. SOVEL: Yes, your Honor.

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"Huntoon

THE COURT: That consists of three pages.

MR. SOVEL: If your Honor please, the original that was marked at the deposition was itself a photostat, but I am offering that exhibit as Exhibit P-1 in this case.

THE COURT: Now we are going back to Exhibit 1 after having gone up to 64. We will begin at 1.

Is there any objection?

MR. JACKSON: No objection, your Honor.

THE COURT: It will be received.

(Plaintiff's Exhibit 1 received in evidence.)

MR. SOVEL: (Reading)

"Q Mr. Huntoon, I show you this document which has been marked as Plaintiff's Exhibit 1 of this date. Can you identify it for?

"A It is a letter of March 16, 1970, addressed to the Chairman of the Securities & Exchange Commission from Mr. Robert W. Haack, President of the Exchange.

"Q What does it pertain to in general, not specifically?

"A It pertains to interim financial aid need by Member Firms at that time."

MR. SOVEL: Moving over to page 32, your Honor, line 8:

"Q Now, this letter, I assume at least, the original

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"Huntoon

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of this letter was signed by Mr. Haack?

"A I believe it was.

And I am not talking about the typing, but the information that went into the letter and the drafting of the letter?

"A I think the information that went into it was a combination of NEBA and the Exchange staff.

"Q Who would have been responsible for drafting the letter?

"A I am really not sure. Letters are drafted by different people in the Exchange on different occasions and I don't know who drafted that one. I was going to say, I don't recall myself having any part of it.

"Q Was a copy of this letter given to you for your information at the time it was sent?

"A In all likelihood.

"Q Do you recall?

"A Not specifically.

"Q Now, I believe the next document in your file is a memo of March 17, 1970.

"A These being chronologically arranged, yes.

"Q May I see the next document, please?

"A (Handing) "

MR. SOVEL: May we have Exhibit 2 from the

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2 deposition?

3 (Pause)

4 MR. SOVEL: If your Honor please, as identified
5 and as appears in the transcript, the document that was
6 marked as Exhibit No. 2 is a photocopy of a memorandum
7 dated March 17, 1970, New York Stock Exchange, Department
8 of Member Firms, addressed to Messrs. Bishop, Calvin,
9 Swartz and Brandow. This was marked as Plaintiff's Exhibit 2
10 for identification of that date. It consists of four pages.

11 THE COURT: You are offering it?

12 MR. SOVEL: I offer it at this time.

13 THE COURT: Is there any objection?

14 MR. JACKSON: No objection, your Honor.

15 THE COURT: It will be received.

xx 16 (Plaintiff's Exhibit 2 received in evidence.)

17 MR. SOVEL: Your Honor, I am resuming at the
18 top of page 34:

19 "Q I show you a document which has been marked
20 Plaintiffs' Exhibit 2 of this date. Can you identify it
21 for us?

22 "A Yes, sir. It is a memorandum written by me
23 addressed to Mr. Bishop, Mr. Calvin, Mr. Swartz and Mr.
24 Brandow.

25 "Q Who are those individuals and who were they at that

1 pgh16

"Huntoon

2 time?

3 "A Mr. Bishop was the Director of the Department
4 of Member Firms. Mr. Calvin was the Vice-President of
5 the Exchange in charge of governmental relations. Mr.
6 Swartz was an Assistant Director in the Department of
7 Member Firms and Mr. Brandow was with Milbank & Tweed
8 as Exchange Counsel.

9 "Q What was the reason that memo was prepared?

10 "A The memo was prepared to transmit some proposed
11 constitution and rule language changes to those persons
12 for their comments.

13 "Q Who asked you to prepare it?

14 "A I don't specifically recall. This is the same
15 question I was asked earlier and I don't remember who
16 originally asked me to prepare it.

17 "Q Accompanying that memo is a draft of certain
18 rule changes --

19 "A Yes.

20 "Q -- proposal changes; is that correct?

21 "A Yes, sir.

22 "Q Who drafted those changes?

23 "A I did.

24 "Q In consultation with anyone or by yourself?

25 "A I believe I consulted, at least, with Mr. Brandow

pgh17

"Huntoon

65

and probably with Mr. Swartz.

"Q Is there any memorandum of your discussions or consultations with them?

"A No, sir.

"Q Where did you get the information which you used to draft the amendments -- drafted the regulations there set forth?

"A I am not certain. Again, that relates to that same question that my memory is not clear on, as to who first told me to do this.

"Q Was that memorandum transmitted to the people named in it?

"A I suspect so, yes."

MR. SOVEL: Skipping down one question, your Honor:

"Q Do you know when it was transmitted to them?

"A I believe it would have been on March 17th.

"Q Did you receive any reply from any of these people?

"A In writing?

"Q Any kind of reply, written or oral.

"A Yes. I think I got some verbal responses. I could find none in the file.

No written responses, but that is not surprising.

"Q Do you remember from whom you received the verbal responses?

1 pgh18

"Huntoon

2 "A I am sure I talked to Mr. Swartz and Mr. Brandow
3 about it and I believe I talked to Mr. Arning and Mr.
4 Cunningham about it.

5 "Q Did you receive any comments from them, critical
6 or favorable or suggesting any changes?

7 "A Yes. I was asked to prepare some different
8 amendments.

9 "Q By whom?

10 "A By Mr. Cunningham and Mr. Arning, too, I
11 believe.

12 "Q Did you prepare an additional proposal?

13 "A Yes, sir.

14 "Q Do you have that with you?

15 "A Yes. That is in another memorandum which I
16 expect you will want too as an exhibit."

17 MR. SOVEL: At that point, your Honor, a document
18 was marked as Plaintiffs' Exhibit No. 3, consisting of
19 seven pages, New York Stock Exchange Department of Member
20 Firms, dated March 18, 1970, to Messrs. Bishop, Calvin,
21 Brandow & Freund from David D. Huntoon.

22 I request the production of the exhibit that
23 was marked as No. 3 at the deposition.

24 MR. JACKSON: I hand it to you (handing).

25 MR. SOVEL: If your Honor please, I offer as

1 pgh19

"Huntoon

2 Exhibit 3 in this case that document that was marked as
3 P-3 at the deposition of Mr. Huntoon.

4 THE COURT: Is there any objection?

5 MR. JACKSON: No objection, your Honor.

6 THE COURT: It will be received.

7 (Plaintiff's Exhibit 3 received in evidence.)

8 MR. SOVEL: Your Honor, continuing at the top
9 of page 38:

10 "Q I hand you a document, which has been identified
11 as P-3 for Identification. Can you tell us what that document
12 is?

13 "A Yes, sir. It is a memorandum to Messrs. Bishop,
14 Calvin, Brandow & Freund, dated March 17, 1970 from me.

15 "Q What is its subject?

16 "A Its subject is attached draft of a memorandum
17 to go from the Cost & Revenue Committee to the Board of
18 Governors. A rule change and a draft letter to Mr. Irving
19 Pollack of the SEC Staff.

20 "Q I see that the copy of this went to Mr. Freund?

21 "A Yes, sir.

22 "Q And he was not included in the first distribution?

23 "A That is correct.

24 "Q Who is Mr. Irving Pollack?

25 "A Mr. Irving Pollack was then the Director

pgh20

"Huntoon

of The Trading & Markets Division of the SEC.

"Q What is the responsibility of that department, if you know?

"A It is the division of the SEC which oversees the exchanges which are registered under the 1934 Act including the New York Stock Exchange."

MR. SOVEL: Skipping down two questions:

"Q Why was it felt necessary to have a letter to Mr. Pollack?

"A He is the person we normally write to when proposing a rule change.

"Q Do all rule changes have to be approved by the SEC?

"A They don't have to be approved as far as I know, but they have to be submitted.

"Q Now, did you receive any replies or comments with respect to your memorandum of March 18, 1970?

"A Not written.

"Q Any orally?

"A Yes.

"Q From whom?

"A At least from Mr. Cunningham and Mr. Arning.

"Q What was the substance of those replies?

"A They asked me to make further changes.

pgh21

"Huntoon

"Q Did they tell you what changes to make?

"A In one case, yes.

"Q And in that one case, which case is that?

"A I was instructed to delete a change in Rule 347.

"Q Pertaining to what?

"A Registered rep compensation.

"Q Who directed you to make that change?

"A I recollect it was Mr. Cunningham.

"Q I think I asked you before, but since I don't quite recall, what is Mr. Cunningham's position?

"A He was then the Executive Vice-President of the Exchange.

"Q Did you then prepare another memorandum?

"A Yes, I did.

"Q Do you have a copy of it with you?

"A Yes.

"Q May we have it produced and marked?

"A (Hanging"

THE COURT: At this point, if your Honor please, a document was produced and marked as Exhibit No. 4 consisting of fix pages, a memorandum from the New York Stock Exchange Department of Member Firms to Messrs. Cunningham, Bishop, Calvin, Brandow & Freund from David D. Huntoon.

1 pgh22

"Huntoon

2 I request the production of Plaintiffs' Exhibit
3 4 from the deposition.

4 MR. JACKSON: I hand it to you (handing).

5 MR. SOVEL: If your Honor please, I offer into
6 evidence as Plaintiff's Exhibit 4 in this case that document
7 that was marked as P-4 in the deposition of Mr. Huntoon.

8 THE COURT: Is there any objection?

9 MR. JACKSON: No objection, your Honor.

10 THE COURT: It will be received.

xx 11 (Plaintiff's Exhibit 4 received in evidence.)

12 MR. SOVEL: Starting at the bottom of page 41:

13 "Q I show you a document which has been marked
14 Plaintiffs' Exhibit 4 for identification, and ask you
15 if you can tell us what that document is?

16 "A Yes, sir. It is a memorandum from me dated
17 March 19, to Messrs. Cunningham, Bishop, Calvin, Blandow
18 & Freuend and it contains drafts of a memorandum to the
19 Board of Governors, a proposed rule change and I believe,
20 a proposed letter to Mr. Pollack to be signed by Mr. Haack.

21 "Q Now, was there another memorandum sent by you on
22 March 19, 1970?

23 "A Yes, there was. I may have to wrap it around
24 a stone to get it from you."

25 MR. SOVEL: If your Honor please, that refers to

pgh23 "Huntoon

passing across the table. We were across a long table.

I shall continue:

"Q Before passing it for identification, is it marked as Exhibit 5. Can you describe it for us?

"A Yes, sir. It is a memorandum from me to Mr. Cunningham. It states -- attached to it are two versions of our memorandum to the Board of Governors and a letter to Mr. Pollack and rule amendment, although the attachments are not with it, I believe.

"Q Would those be the ones marked as 3 and 4?

"A I believe so."

MR. SOVEL: At this point, your Honor, marked as Exhibit 5 was a memorandum from the New York Stock Exchange Department of Member Firms dated March 19, 1970, to Mr. J. John Cunningham from David D. Huntoon.

I request the production of that document.

MR. JACKSON: Here it is (handing).

MR. SOVEL: I offer as an exhibit in this case, Plaintiff's Exhibit 5, the document that was marked as P-5 at the deposition of Mr. Huntoon.

THE COURT: Is there any objection?

MR. JACKSON: No objection, your Honor.

THE COURT: It will be received.

(Plaintiff's Exhibit 5 received in evidence.)

pgh24

"Huntoon

THE COURT: Both Exhibits 4 and 5 are dated the same date. Exhibit 5 in evidence refers to certain attachments. The exhibit in question, Exhibit No. 5, is but a single sheet. So that I am clear on this -- I may have missed it in the testimony -- could you indicate for me what the attachments were?

MR. SOVEL: If your Honor please, I believe that Exhibit 4 was the attachment to Exhibit 5.

THE COURT: You may proceed.

MR. SOVEL: (Reading)

"Q Now, Mr. Huntoon, the memorandum which is marked P-5, is to Mr. Cunningham and refers to earlier versions of the memorandum to the Board?

"A Yes.

"Q Mr. Cunningham was on the distribution list for the memo of March 18, 1970, which has been marked as Exhibit 4, was he not?

"A Yes.

"Q So is it possible that the documents referred to in P-5 are referred to in Exhibit 2 and 3 where Mr. Cunningham is not on the distribution list?

"A I don't think so. I think it is 3 and 4.

"Q All right. Now, there is a statement in the memorandum marked P-5 that Mr. Arming told you that he

1 pgh25

"Huntoon

2 wanted both ready?

3 "A Yes.

4 "Q Who is Mr. Arning again?

5 "A Mr. Arning is the -- was the Operations Vice-
6 President of the Exchange at that time.

7 "Q What is he now for them?

8 "A He is still the Operations Vice-President.

9 "Q When did he tell you he wanted both ready?

10 "A I believe on the 19th.

11 "Q The day they were prepared?

12 "A Yes.

13 "Q Did he tell you why he wanted both ready?

14 "A No, I don't recall that he did.

15 "Q Now, am I correct that the proposed proposal set
16 forth in P-2 and P-3 provided that commission would be paid
17 on the surcharge whereas the proposal embodied in P-1
18 did not?

19 "A I understand the question, I think. I wouldn't
20 like to give it a yes or no because of the word 'would.'

21 "Q Referring to P-2, P-2 is a four-page document,
22 is it not?

23 "A Right.

24 "Q And in the third page of it, it contains the
25 draft for a new Rule No. 383; is that correct?

1 pgh26

"Huntoon

2 "A That is correct.

3 "Q And on Pages 3 and 4 provides for an amendment to
4 Rule 347; is that correct?

5 "A That's correct.

6 "Q What is Rule 347?

7 "A It is the rule that relates to compensation
8 of registered reps of member organizations.

9 "Q And it sets forth the items which they may be
10 compensated or participate in commissions, does it not?

11 "A Yes. It is -- yes.

12 "Q And is not the proposed amendment embodied in
13 P-2, Section 5, which states that service charges and
14 registered reps may be paid a portion of any service
15 charge required to be collected under Rule 383?

16 "A That is correct; it does.

17 "Q And was that not prepared by you as part of your
18 understanding what the proposal to the SEC embodied?

19 "A It was prepared by me, yes.

20 "Q In accordance with your understanding of the
21 proposal submitted to the SEC?

22 "A I would assume so.

23 "Q I am not asking you to assume. It is your memo,
24 covering memo?

25 "A You are asking for my understanding of something

pgh27

"Huntoon

almost two years ago and my memory is not that good.

"Q Would the covering memo refresh your recollection?

made to the SEC.

"Q It was your understanding then, the language you were drafting was covering --

"A Yes.

"Q Now, the document of March 13 -- March 18, 1970 contains Plaintiffs' Exhibit 3, the same proposal as for amended language as set forth in Plaintiffs' Exhibit 2, does it not?

"A Yes. Well, except it does not include an amendment of the Exchange's Constitution which is contained in Exhibit 2.

"Q It contains a new rule 383, an amendment to Rule 387?

"A Yes, sir.

"Q I am referring now to P-3. It does not contain any amendment to Article 15-a of the Constitution?

"A That is correct.

"Q The memorandum to the Board of Governors and the letter to Mr. Pollack contained in Exhibit P-3 were drafted by you?

"A Yes, sir.

pg 28

"Huntoon

"Q And were they drafted in accordance with your understanding of the submission, of the terms of the submission made to the DOJ.

"A They were drafted as my understanding of what at that time I was supposed to draft, yes."

MR. SOVEL: Your Honor, continuing on page 49, line 12:

"Q In P-2 and P-3, you were drafting the specific language to implement the request that is reflected in P-1?

"A Yes.

"Q Now, in the document which has been marked P-4, you have not included any amendment to Rule 347; is that correct?

"A That's correct.

"Q You included only the proposed 383?

"A That is correct.

"Q Who asked you to prepare the rule in that form?

"A Mr. Cunningham."

MR. SOVEL: Continuing on page 52, your Honor, line 19:

"Q Now, referring to Exhibit P-4, is a draft of a letter that was to be sent to Mr. Irving Pollack, the following statement is made. 'The new Rule 383 is

1 pgh29

"Huntoon

2 proposed as a service charge under Article XV, Section 9
3 of the Constitution. The method has been selected in order
4 to minimize the lapse of time between submission to the
5 Board of Governors of their proposal and its effective
6 date.'

7 Could you please explain that for me?

8 "A Yes, sir.

9 The alternative to a rule, pursuant to Article
10 15, Section 9 of the Constitution, which rule could be
11 adopted by the Board of Governors, was at that time an
12 amendment of the Constitution itself, and an amendment
13 of the Constitution, Article 15 of the Constitution, which
14 relates to commissions, would at that time have taken a
15 minimum of six weeks. We were seeking a way to do it
16 faster. The need for additional revenue was acute; therefore,
17 we chose to institute a service charge pursuant to the
18 section in the Constitution, which charge could be adopted
19 by the Board of Governors without amending the Constitution
20 itself.

21 "Q And is it correct that that is the sole reason
22 why it was called a service charge under Article 15,
23 Section 9?

24 "A I am not sure if it is the sole reason, but
25 it is a basic reason.

1 pgh30

"Huntoon

2 "Q Do you know of any other reason?

3 "A No.

4 "Q Has the letter ever been sent to Mr. Pollack?

5 "A Yes.

6 "Q May I see the letter? (Handing)"

7 MR. SOVEL: After that point there was marked
8 as Exhibit 6 a letter dated March 19, 1970, to Mr. Irving
9 M. Pollack.

10 I request the original of that exhibit be pro-
11 duced.

b3 12 MR. JACKSON: Here it is (handing).

13 MR. SOVEL: If your Honor please, I offer into
14 evidence as Plaintiffs' Exhibit 3, that document which
15 was marked as P-6 at the deposition of Mr. Huntoon.

16 THE COURT: Is there any objection?

17 MR. JACKSON: No, your Honor.

18 THE COURT: It will be received.

19 (Plaintiffs' Exhibit 6 received in evidence.)

20 THE COURT: I have seen some drafts of letters
21 to Mr. Pollack, the Director of the Division of Trading
22 and Markets of the Commission. Is this letter, which is
23 Plaintiffs' Exhibit 6, the first letter that was dispatched
24 to Mr. Pollack subsequent to March 16, 1970?

25 MR. SOVEL: If your Honor please, I think the

1 pgh31

"Huntoon

2 answer to that is that that was the letter that was sent
3 and the other drafts were not sent.

4 THE COURT: That's my question. I wanted to be
5 clear in my own mind. I'm sure the proof will clear it up.
6 I have been seeing drafts, and this is the first letter
7 that appears to be a letter actually sent.

8 You may proceed.

9 MR. SOVEL: At the top of page 55, your Honor:

10 "Q I show you the document which has been asked
11 Plaintiffs' Exhibit 6 for identification, is that the letter
12 that was sent to Mr. Pollack?

13 "A Yes, sir, it is.

14 "Q And was signed by Mr. Haack?

15 "A I am not sure the signature shows there, but
16 I am reasonably confident that it was.

17 "Q And this carries with it, only the new proposal
18 383?

19 "A Yes.

20 "Q In the memorandum that is Plaintiffs' Exhibit 2,
21 there is a draft of a letter to Mr. Pollack from Mr. Haack;
22 is there not?

23 "A Yes.

24 "Q And does not that letter state in part the
25 Amendment to Rule 347 will permit member organizations to

pgh32

"Huntloot"

include the new charge for purposes of arriving at registered representatives' compensation? The purpose of this is to give member organizations a means by which they can encourage member representatives to give a higher level of service to small orders? That statement appears in the letter.

"A Yes, in the draft.

"Q In the draft, yes.

Did you prepare that?

"A Yes.

"Q Now, there is no similar paragraph in the next draft, which you prepared, which is Plaintiffs' Exhibit 4 for identification.

"A Yes.

"Q Yes, there is none?

"A Yes, you are correct, there is no similar language.

"Q Why was such language deleted?

"A I was asked to prepare a package of rule amendments to the Board of Governors and a letter to Mr. Pollack without the amendment of Rule 347.

1 eorf 4 am 1

"Huntoon"

2 MR. SOVEL: Continuing:

3 "Q And was that also in response, or was that in
4 response to the request by Mr. Cunningham to which you
5 previously testified?

6 "A Yes.

7 "Q Now, did you also prepare, or was there prepared
8 a memorandum to the Board of Governors --

9 "A Yes.

10 "Q -- around the same time?

11 " May I see that?

12 "A Are you looking for a draft or the memorandum
13 itself?

14 "Q Well, I am looking for whatever you have there.

15 "A In the exhibits you have are drafts, two drafts
16 of memorandums."

17 At this point, your Honor, there was marked as
18 Exhibit 7, a memorandum, New York Stock Exchange, Department
19 of Member Firms, dated March 19, 1970, to the Board of
20 Governors from Special Committee on Member Firms, Costs &
21 Revenues.

22 I ask for the original of that exhibit No. 7.

23 If your Honor please, I offer in evidence
24 Plaintiff's Exhibit 7, the document that was marked as P-7.

25 MR. JACKSON: No objection.

1 corf 2

"Huntoon"

2 THE COURT: Received.

3 (Plaintiff's Exhibit 7 received in

4 evidence.)

5 "Q Is Exhibit 7 a copy of the memorandum to the
6 Board of Governors?

7 "A Yes.

8 "Q And the memo indicates it is from the Special
9 Committee on Member Firms, Costs & Revenues?

10 "A Yes.

11 "Q Were you a member of that Committee?

12 "A No.

13 "Q Whose committee was that?

14 "A That was the committee which was assigned by the
15 Board of Governors to the task of developing a new
16 commission rate schedule."

17 Passing over to page 59, line 3.

18 "Q Now, who prepared the memorandum itself?

19 "A Who prepared the memorandum?

20 "Q Yes.

21 "A I did.

22 "Q Did you do that in consultation with anyone else?

23 "A I don't recall. Chances are that I might have
24 talked to Mr. Swartz about it.

25 "Q In this memorandum, the statement is made,

1 eorf 3

"Huntton

2 'Under the Provisions of Article 15, Section 9,
3 member organizations are not permitted to share any portion
4 of the new charge with members, allied members, regional
5 reps or other employees.'

6 "Do you remember making that statement or prepar-
7 ing that statement for this memorandum?

8 "A I don't remember preparing that sentence, but I
9 accept that I did so.

10 "Q What were the circumstances that led you to
11 include that sentence in the memorandum?

12 "A It is simply a description of a Constitutional
13 Provision.

14 "Q On what basis did you conclude this new charge
15 was governed by this Constitutional Provision?

16 "A I am not certain in the first place that I alone
17 made that determination.

18 "Q Who did you share the responsibility with?

19 "A Members of the senior staff of the Exchange and we
20 may have also consulted with our counsel on that.

21 "Q Now, you are saying, may. Do you know?

22 "A I don't specifical, recall.

23 "Q Do you have anything that will refresh your
24 recollection?

25 "Q No, except for the fact that I see that Mr.

1 eorf 4 "Huntoon

2 Brandow was included on the distribution list.

3 "Q Now, I asked you what the circumstances were and
4 I don't know if I fully got an answer to that question what
5 the circumstances were for including this sentence in the
6 memorandum?

7 "A It is a declaration of what the Constitution of
8 the Exchange provides.

9 "I don't know if you need any further circumstances
10 than that.

11 "Q Well, there are many sections of the Constitution
12 which are not covered in this memorandum.

13 "A I should be more explicit. It is a provision of
14 the Section which authorizes the Board of Governors to adopt
15 a service charge. It is the so-called service charge
16 section of the Constitution of the Exchange.

17 "Q But I believe you testified that you had proposed
18 this as a service charge under Article 15, Section 9 in
19 order to obtain haste in getting it enacted?

20 "A That is true."

21 (Now, continuing at page 62, line 17.

22 "Q What happened at the meeting of March 19, 1970
23 with respect to this memorandum?

24 "A At the Board of Governments?

25 "Q Yes.

1 eorf 5

"Huntoon

2 "A The Board of Governors approved the new rule 383
3 in principle for submission to the SEC. That is to say,
4 formal submission under the section of the Securities
5 which requires that submission.

6 "Q Are there any minutes of the Board of Governors
7 reflecting the action taken that day?

8 "A Yes.

9 "Q May I see them?"

10 At that point, if your Honor please, there was
11 produced a copy of the minutes as Exhibit 8 and I ask for
12 the production of Exhibit 8.

13 THE COURT: Those are the minutes of March what was
14 it?

15 MR. JACKSON: 19th, 1970.

16 THE COURT: Thank you.

17 MR. JACKSON: Yes, the exhibit is an extract of
18 the relevant portions of those minutes.

19 MR. SOVEL: Yes. If your Honor please, we only
20 have the portion of that part that pertained to this and
21 nothing else and I didn't require anything else.

22 THE COURT: You are offering just the extract?

23 MR. SOVEL: That is correct.

24 THE COURT: Any objection?

25 MR. JACKSON: No objection.

1 eorf 6

2 THE COURT: Received.

3 MR. SOVEL: As Exhibit 8.

4 (Plaintiff's Exhibit 8 received in
5 evidence.)

6 MR. SOVEL: Continuing at page 64:

7 "Q Did you attend the meeting?

8 "A Yes, sir.

9 "Q And was this the total action, the motion reflected
10 in Exhibit 8, the total action taken by the Board of
11 Governors with respect to the surcharge at that time?

12 "A To the best of my memory, yes.

13 "Q What was the next step after the Board of Governor
14 adopted this proposal?

15 "A The proposal was described in the circular sent
16 by Mr. Haack to the members and allied members of the
17 Exchange.

18 "Q Do you have a copy of that circular?

19 "A As it happens, I do."

20 If your Honor please, at that point there was
21 marked as Exhibit 9 a circular dated March 19, 1970. I
22 request its production.

23 If your Honor please, I offer as Plaintiff's
24 Exhibit 9 that document, which was marked as P-9 at the depo-
25 sition of Mr. Huntoon.

1 eorf 7

2 THE COURT: Any objection?

3 MR. JACKSON: No objection, your Honor.

4 THE COURT: Received.

5 (Plaintiff's Exhibit 9 received in
6 evidence.)

7 (Mr. Sovel continues reading.)

8 "Q Mr. Huntoon, I show you a document that has been
9 marked as Plaintiff's Exhibit 9 of March 19, 1970, and I
10 ask you if that is the circular that was sent on that date to
11 the member firms?

12 "A To members and allied members, yes.

13 "Q Did you have anything to do with preparing this
14 circular?

15 "A I think I had a little something to do with it,
16 yes.

17 "Q Who else had something to do with it?

18 "A Well, there is a lot of data in it that was
19 developed by NERA. Dr. Freund probably had something to
20 do with that. Documents -- circulars like that are frequently
21 looked at by lots of people on the top staff and changes
22 are made by them and I am sure, I recall that it is
23 usually Mr. Haack's habit to take a look at them and some-
24 times to edit them, so they are the product of many hands.

25 "Q Now, the circular is dated March 19th?

"A Yes.

1 eorf 8

"Huntoon

2 "Q March 19th is the date of your memos, the date
3 of the meeting and the date of this. Was it all done the
4 same day?

5 "A Well, we were working very fast on those days.
6 We felt our member firms needed the money badly."

7 Now, continuing on page 68, at line 17:

8 "Q Now, we have gone through the very busy March
9 19th period. What happened next? I assume we got through
10 March 19th. Go ahead. Specifically, was anything, after
11 the Board of Governors approved the proposed rule and
12 this circular was sent out, was any machinery set up to
13 further implement the proposal?

14 "A I don't think so. At that time we were waiting
15 to hear from the SEC to get a response from them, which
16 would permit us to go ahead and give final approval to the
17 rule.

18 "Q Were there any meetings with the SEC in the next
19 two weeks that you know of?

20 "A Not that I know of.

21 "Q What was the next contact you had with this pro-
22 posed service charge?

23 "A It was adopted at the meeting of the Board of
24 Governors, given final approval on April 2nd.

25 "Q Were there any memos or correspondence relating

1 eorf 9

"Huntoon

2 to the service fee between March 19th and April 22

3 "A Not that a search of our records produced.

4 "Q Do you have anything concerning
5 the Board of Governors on April 2?"

6 If your Honor please, at that point there was
7 produced and marked as Exhibit 10 an extract from the minutes
8 of the Board of Governors of the New York Stock Exchange,
9 dated April 2, 1970. I request that that extract be
10 produced.

11 If your Honor please, I offer into evidence as
12 Plaintiff's Exhibit 10 that document, which was marked as
13 P-10 at the deposition of Mr. Huntoon.

14 MR. JACKSON: No objection, your Honor.

15 (Plaintiff's Exhibit 10 received in
16 evidence.)

17 (Mr. Sevel continues reading deposition:)

18 "Q Were you present at the meeting of the Board of
19 Governors on April 2, 1970?

20 "A Yes.

21 "Q Does the action reflected in Exhibit 10 set forth
22 what occurred at that meeting with respect to the service
23 charge?

24 "A Yes.

25 "Q There is reference in the introductory paragraph

1 eorf 10

"Huntoon

2 to modifying language. Could you tell us what that relates
3 to?

4 "A Yes, sir. There were two modifications made by
5 the SEC. One limited the duration of the service charge
6 to the period from April 6th through July 5, 1970, and the
7 other stated that while the service charge is in effect
8 transaction size and other limitations generally imposed
9 since April 1, 1969, by the Exchange, organization members
10 had to be suspended.

11 "Q How did the SEC notify the Exchange of its
12 action on its request?

13 "A By letter.

14 "Q Do you have a copy of that letter?

15 "A Yes, I do."

16 If your Honor please, there was then marked as
17 Exhibit 11 a letter, dated April 2, to Mr. Haack consisting
18 of three pages and I ask that that letter be produced.

19 If your Honor please, I offer as Plaintiff's
20 Exhibit 11 that document which was marked as P-11 at the
21 deposition of Mr. Huntoon, being a letter from the SEC
22 to the New York Stock Exchange.

23 MR. JACKSON: No objection.

24 THE COURT: Received.

25 (Plaintiff's Exhibit 11 received in
evidence.)

1 eorf 11

2 MR. SOVEL: Continuing at the top of 72:

3 "Q Mr. Huntoon, I show you the document marked as
4 Plaintiff's Exhibit 11 for identification. Is that a copy
5 of that letter that the Exchange received from the SEC on
6 April 2, 1970?

7 "A Yes, it is dated April 2. If we received it, we
8 received it over the telephone on April 2.

9 "Q What you are stating is that the letter was
10 probably read to someone over the telephone that day so
11 you could act on it, but you received the actual written
12 copy subsequently?

13 "A That is my recollection.

14 "Q Were there any other communications between the
15 SEC and the Exchange relative to the surcharge other than
16 this letter and the possible reading of it over the
17 telephone up until April 2, 1970?

18 "A You are limiting that to written communications?

19 "Q No.

20 "A I don't know because I don't recall if I had any
21 communication with them, which is not surprising, but
22 others may have.

23 "Q Were you told of any others?

24 "A Not that I recall today."

25 Now, continuing over at page 80, line 16:

1 eorf 12

"Huntoon

2 "Q No. Is there anything in the letter of April 9th
3 that refers to paying commission to registered reps based
4 on the surcharge?

5 "A May I look at it again?

6 "(Handing)

7 "(Reporter reads back the last question.)

8 "No. That had already been covered in an
9 earlier circular.

10 "Q Which circular?

11 "A Mr. Haack's circular of the 19th of March.

12 "Q I show you document marked Plaintiff's Exhibit 9
13 for identification, Mr. Haack's circular of March 19, 1970.
14 Can you tell me how that is covered in that circular?

15 "A Yes, sir. It is covered in the third paragraph.

16 "Q What does the third paragraph state?

17 "A The third paragraph states, 'Although firms
18 should be aware that since this is a minimum service charge,
19 the Exchange's Constitution does not permit the charge to
20 be shared in the form of compensation to member firms regis-
21 tered representatives. We will remind firms they may
22 continue to follow their individual policies in sharing
23 the minimum commission with their personnel.'

24 "Q Was any response received by the Exchange to
25 this; particular, to the circular of March 13, 1970?

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In that statement, any objection with it?

"A I'm sorry. I don't understand your question.

"Q After the circular of March 25, 1970, was sent out --

"A Yes.

"Q -- did any of the members or allied members or anyone else to your knowledge, take exception to that statement or make any comment on that statement that the surcharge could not be shared with the registered reps?

"A I don't recall that."

Continuing at page 117, line 1:

"Q Now, there came a time, did there not, when application was made to extend the surcharge?

"A Yes, sir.

"Q When did that happen and how was it done?

A That was the application to the SEC contained in the letter dated June 18 from Mr. Haack to Chairman Budge of the SEC, containing an Amendment of Rule 383, which would -- which would have stricken the words of July 5, 1970, 'Through July 1970,' and substituted the words, 'Through October 3, 1970.'

"Q Was that the only change in the rule that was proposed at that time?

"A Yes. I'd have to sit down and read it word

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"Huntoon

2 for word to be positive, but I am almost certain I recall
3 no other change."

4 Now, continuing at page 120 at line 20.

5 "Q Now, after this letter of June 18th was sent out,
6 what happened next?

7 "A A change was noted, but it was not the change in
8 that letter. Instead of extending the service charge
9 until October 3, it was extended indefinitely.

10 "Q How was that accomplished?

11 "A By action of the Board of Governors.

12 "Q What day?

13 "A July 2, at its meeting, the board of Governors
14 adopted an amendment to Rule 383, the effect of which was
15 to delete the words, 'Through July 5, 1970.'

16 "Q Do you have a copy of the Minutes of that meeting?

17 "A Yes, sir.

18 "Q Exhibit 21 is an excerpt from the meeting of the
19 Board of Governors dated July 22, 1970; is that correct,
20 Mr. Huntoon?

21 "A Yes."

22 Now, I request the production of Exhibit 21 of
23 that date, which was an excerpt of the copy of the minutes
24 of the meeting of the Board of Governors, dated July
25 2, 1970.

1 corf 15

2 If your Honor please, I offer into evidence as
3 Plaintiff's Exhibit 21 that document, which was marked as
4 P-21 at the deposition of Mr. Hanson.

5 THE COURT: Now, you have skipped from 11,
6 according to my notes, which was the last exhibit which
7 has been marked, up to 21. That was intention?

8 MR. SOVEL: That was intention, your Honor.

9 THE COURT: Any objection?

10 MR. JACKSON: No objection, your Honor.

11 THE COURT: Received.

12 (Plaintiff's Exhibit 21 received in
13 evidence.)

14 MR. SOVEL: At that point, your Honor, there was
15 also marked Plaintiff's Exhibit 22, excerpt of the minutes
16 of the meeting of June 18, 1970 -- no, strike that.

17 Continuing on page 126, your Honor, line 10:

18 "Q Now, to your knowledge, during this period and I am
19 limiting myself to the period June 18, when the request was
20 made for the extension until, say, the end of August,
21 other than any appearances that might have been at formal
22 hearings before the SEC, was there any other contact,
23 written or oral, between the Exchange and the SEC?

24 "A On the subject of the service charge?

25 "Q Yes.

1 eorf 16

"Huntoon

2 'A Between --

3 "Q You and them.

4 "A Between the time, June and the end of August, and
5 you say?

6 "Q Yes.

7 "A Yes. There were some other communications.

8 "Q Would you explain them?

9 "A On the 25th of June, we received by telephone
10 a letter from Chairman Budge of the SEC to Mr. Haack,
11 relating to whether the service charge would be taken
12 into account for the purpose of determining the basis for
13 reciprocity between members of the New York Stock Exchange
14 and members of the Regional Exchanges.

15 "Q What does that mean?

16 "A Stated in English, the SEC wrote us and said
17 that they understood that we had told our member firms
18 that service charge income could not be considered as a
19 basis for reciprocity between members of the New York Stock
20 Exchange and security firms which are members only of
21 regional exchanges, and the reciprocity there is the tradi-
22 tional arrangement under which, if a member of the New
23 York Stock Exchange were given business in our listed
24 securities by a regional member, he'd reciprocate with
25 business on the regional exchange.

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"Huntoon

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"Q Had you so advised your member firms?

"A Evidently we had, although I could find no written record of it and may not have advised them in writing. However, the SEC wrote us, stating that we understood that we had so interpreted.

"Q That was or was not?

"A That we had interpreted it was not a proper basis for reciprocity and they wanted us to reverse that.

"Q Did you?

"A Yes.

"Q May I see the letter from the SEC first?

"A Sure (Handing)."

At that point there was marked as an exhibit a document numbered 24. May we have document No. 24?

If your Honor please, I offer into evidence, as Plaintiff's Exhibit No. 24, and I am skipping some numbers, that document which was marked as P-24 at the deposition of Mr. Huntoon.

THE COURT: That is an SEC letter, dated June 25, 1970, is that correct?

MR. SOVEL: If your Honor please, as it will subsequently show in the testimony, it was a typed copy of a letter read over the telephone and the other

1 eorf 18

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2 letter --the actual letter will come in later on in the
3 course of the deposition.

4 MR. JACKSON: NO OBJECTION, YOUR HONOR.

5 THE COURT: Received.

6 (Plaintiff's Exhibit 24 received in
7 evidence.)

8 MR. SOVEL: Now, on page 2 of this letter the
9 following statement was made:

10 "It may be that the position take by your Exchange
11 with respect to the matter of regular way reciprocity
12 rests on the technical distinction between a service
13 charge and an increase in commission rates. Whatever the
14 importance of this distinguishes, for the purpose of your
15 Exchange expediting the procedures for obtaining this
16 interim emergency financial relief, it can have no
17 relevance to the problem of fair treatment as between members
18 of your Exchange and sole members of a Regional Exchange."

19 "This statement refers to the technical distinction
20 between a service charge and increase in commission rates.
21 Does that relate to the discussion we had previously
22 with respect to Article 15, Section 9?

23 "MR. JACKSON: The statement in this letter relates
24 to what this witness' testimony was.

25 "Q Does the technical distinction, technical language

1 eorf 19

"Huntoon

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2 distinction refer to the fact that a service charge under
3 Article 15, Section 9 could not be shared?

4
5 go ahead and answer?

6 "A I would have to put myself in the shoes of
7 Chairman Budge to do that.

8 "Q Well, if there was a service charge, would it
9 be subject to reciprocity under Article 15 in view of the
10 requirements of Article 15, Section 9?

11 "A Repeat that?

12 "(Reporter reads back the last question.

13 "A Article 15, Section 9 does not specifically deal
14 with reciprocity.

15 "Q Well, do you know on what basis the determination
16 had been made that the service fee or service charge was
17 not subject to reciprocity prior to this letter?

18 "A No, I don't know. The letter starts out with an
19 understanding expressed by Chairman Budge. As I told you,
20 we can find nothing in the record that indicates we had
21 ever in writing at least, given that interpretation.

22 "Q But in fact, was that not the practice that had
23 been followed by the firms prior to this letter?

24 "A What was not the practice?

25 "Q Not considering it as a basis for reciprocity?

1 eorf 20

"Huntoon

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2 "A I don't know.

3 "Q Who would know?

4 "A I am not sure if anybody would know, except
5 perhaps somebody in the firm. The reciprocal arrangement
6 between members of the New York and Regional Exchanges reach
7 back far into history.

8 "Q As far back as that other surcharge?

9 "A Further, and are immensely complex and have seldom
10 been put down on paper except perhaps on pieces of scrap
11 paper.

12 "Q Mr. Huntoon, did the Exchange give any reply to this
13 letter of June 25, 1970?

14 "A Yes.

15 "Q May I see that reply

16 "A Yes, you may."

17 At that point there was marked as Exhibit 25
18 the reply to that letter and I ask for the production of
19 document No. 25.

20 If your Honor please, I offer into evidence
21 as Plaintiff's Exhibit No. 25 that document which was
22 marked as P-25 at the deposition of Mr. Huntoon.

23 MR. JACKSON: No objection.

24 THE COURT: Received.

25 (Plaintiff's Exhibit 25 received in evidence.)

1 eorf 21

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2 (Mr. Sovel read as follows:)

3 "Q Is Exhibit 25 the reply that was sent to the SEC?

4 "A If that is the number.

5 "Q Yes, that is the number.

6 "A Yes."

7 On page 133, line 23.

8 "Q Other than this letter, were there any other
9 communications between the Exchange and the SEC during
10 the period through August?

11 "A First, here is the letter originally referred
12 to under another exhibit number as having been dictated
13 over the telephone and we finally got it. July 1."

14 At that point, your Honor, there was marked as
15 Exhibit 27 the actual letter of which Exhibit 24 is a
16 copy, and I think I would like to offer that into evidence
17 as being the actual letter.

18 THE COURT: All right. So actually 24 and 27 are
19 the same, 27 being the letter and 24 being a copy which had
20 been phoned in.

21 MR. SOVEL: Yes. With the one exception that
22 actually 27 is a photocopy of the original letter and not
23 the original letter.

24 I offer it into evidence.

25 THE COURT: Any objection?

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MR. JACKSON: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 27 received in evidence.)

MR. SOVEL: (reading)

"Q Exhibit 27 is a copy of the letter which was originally dictated to you over the phone, dictated by Mr. Rappaport over the phone on June 25, 1970, which was previously marked as Exhibit 24; is that correct?

"A Yes, except it wasn't dictated to me.

"Q Right. It was dictated to someone?

"A Yes; someone at the Exchange who could take shorthand.

"Q And this letter bears the date July 1, 1970, although the conversation or the original dictation over the phone was on June 25, 1970?

"A That is correct.

"Q Anything else?

"A Yes. The letter of July 7 from Chairman Budge to Mr. Haack, relating to the extension of the service charge past July 5, in which the Commission did not object to that extension."

At that point, if your Honor please, there was marked as Exhibit 28 a letter from the Securities and Exchange Commission to Mr. Haack, and I request that that

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2 be produced.

3 If your Honor please, I offer this into evidence
4 as Plaintiffs' Exhibit 28, a photocopy of a letter, dated
5 July 7, 1970, from Chairman Hamer Budge of the Securities
6 and Exchange to Mr. Robert W. Haack.

7 MR. JACKSON: No objection.

8 THE COURT: Received.

9 (Plaintiffs' Exhibit 28 received in evidence.)

10 MR. SOVEL: (reading)

11 "Q Exhibit 28 is a copy of a letter to Mr. Haack
12 from Chairman Budge, dated July 7, 1970?

13 "A Yes.

14 "Q The letter refers to Exchange Release 8923. Do
15 you have a copy of that release?

16 A No, I don't.

17 "Q Do you know what it is?

18 "A My recollection is that it was a release by the
19 Securities and Exchange Commission to the effect that it
20 was considering the extension of the service charge.

21 "Q Now, this letter refers to the Commission's
22 non-objection to the extension of the rule on the condition
23 that the Exchange would terminate the rule as directed to
24 by the SEC?

25 "A Yes.

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1 eowc
2 "Q Was that condition accepted by the Exchange?

3 "A Yes, it was.

4 "Q Do you have any documentary evidence?

5 "A Yes. We replied on July 23 with a letter to
6 Mr. Chairman Budge from Mr. Haack."

7 At that point, if your Honor please, there was
8 marked as Exhibit 29 the letter from the New York Stock
9 Exchange to Chairman Budge, and I request the production
10 of Exhibit 29.

11 If your Honor please, I offer into evidence as
12 Plaintiffs' Exhibit No. 29 the document which was marked
13 as P29 at the deposition of Mr. Huntoon.

14 MR. JACKSON: No objection.

15 THE COURT: This in essence is a response to P28,
16 P28 having been a letter of July 7, 1970, and 29 being a
17 letter of July 23, 1970?

18 MR. SOVEL: Yes.

19 THE COURT: Am I correct?

20 MR. SOVEL: Yes, your Honor.

21 (Plaintiffs' Exhibit 29 received in evidence.)

22 MR. SOVEL: (reading)

23 "Q And is Exhibit 29 the reply to that letter?

24 "A Yes, sir.

25 "Q Reflecting the Exchange's position and desire for

1 eiwc

2 a termination date?

3 "A Correct, sir."

4 Now on page 137, line 7:

5 "Q During this period were there any communications
6 with the members of the Exchange relative to the service
7 charge?

8 "A Yes. On June 30th, the Exchange issued another
9 of its educational circulars, No. 301, to each member
10 organization, advising that the regular way reciprocity
11 could take into account the service charge."

12 At that point, if your Honor please, there was
13 marked as Exhibit 30 Educational Circular No. 301, and I
14 request that it be produced.

15 If your Honor please, I offer into evidence as
16 Plaintiffs' Exhibit 30 that document which was marked as
17 P30 at the deposition of Mr. Huntoon.

18 MR. JACKSON: No objection.

19 THE COURT: Received.

20 (Plaintiffs' Exhibit 30 received in evidence.)

21 MR. SOVEL: On the top of 138:

22 "Q With respect to Exhibit 30, that is the education-
23 al memo relative to the reciprocity arrangement --

24 "A Yes.

25 "Q -- did you have anything to do with its preparation?

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"A I don't recall. I probably drafted it."

Continuing on page 146, line 5:

"Q Now, going back to the period of August 1970, beginning of August 1970, continuing to the present, were there any communications between the Exchange and the Member Firms addressed to the service charge?

"A Yes. On May 26, 1971, Educational Circular No. 329 was sent to each member of the organization reminding them that they were not to have any restrictions on the handling of small customer transactions or accounts."

At that point, if your Honor please, there was marked as P34 Educational Circular No. 329, and I request its production.

THE COURT: Let me be sure of something. My records indicate the last exhibit which you offered was 30. Now you are offering 34, am I right?

MR. SOVEL: That is correct, your Honor.

THE COURT: Very well.

Mr. Jackson, do you have that Educational Circular?

MR. JACKSON: Yes, sir. No objection to its receipt.

THE COURT: Received. That is 329, the prior one being 301.

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2 (Plaintiffs' Exhibit 34 received in evidence.)

3 MR. SOVEL: (reading)

4 "Q Mr. Huntoon, Exhibit 34 is the Educational
5 Circular No. 329?

6 "A Yes.

7 "Q Anything else between the Exchange and its
8 member firms?

9 "A Yes. On October 21, Mr. Haack sent a special
10 Membership Bulletin to members and allied members announcing
11 the amendment approved by the Board of Governors to the
12 Constitution, the Exchange's Constitution, and containing
13 a ballot for the membership to vote on that constitutional
14 change, mentioning the fact that the service charge would
15 be discontinued at the time it became effective."

16 If your Honor please, at that point there was
17 marked as Plaintiffs' Exhibit 35 a circular, dated
18 October 21, 19 I request the production of P35.

19 If your Honor please, I offer into evidence as
20 Plaintiffs' Exhibit 35 that document, which was marked as
21 P35 at the deposition of Mr. Huntoon.

22 MR. JACKSON: No objection.

23 THE COURT: Received.

24 (Plaintiffs' Exhibit 35 received in evidence.)

25 MR. SOVEL: "Exhibit 35 is a copy of the circular

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2 distributed under Mr. Haack's name?

3 "A Yes, sir.

4 "Q Any other document during this period?

5 "A Yes. On November 17, following the membership
6 approval of the amendment to the Constitution for new
7 commission rates, another circular was sent to the
8 membership as Educational Circular No. 344. On page 9 there
9 is a reference to the repeal of the service charge at
10 such time as the commission, the new commission, becomes
11 effective."

12 If your Honor please, at that point there was
13 marked as Plaintiffs' Exhibit No. 36, Educational
14 Circular No. 344. I request its production.

15 If your Honor please, I offer into evidence as
16 Plaintiffs' Exhibit 36 that document which was marked as
17 P36 at the deposition of Mr. Huntoon.

18 MR. JACKSON: No objection.

19 THE COURT: Received.

20 (Plaintiffs' Exhibit 36 received in evidence.)

21 MR. SOVEL: (reading)

22 "Q Mr. Huntoon, Exhibit 36 is a copy of the
23 Educational Circular No. 344, which you have described?

24 "A Yes, sir.

25 "Q Any other communications to member firms?

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2 "A No, no, sir, not that our search revealed."

3 If your Honor please, that completes the portion

4 of Mr. Huntoon's deposition that we propose to offer.

19

"Q What else was discussed?

20

21

22

23

24

25

"A There was a discussion of the prohibition against t--
I'd have to look at the rule language. The rule language
contains, Rule 383 contains a prohibition against charging
more than the minimum commission and against putting
restrictions on small-- opening of small accounts and
handling of small orders. We discussed that also.

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2 "Q Was there any discussion relating to employee
3 compensation, registered rep compensation?

4 "Yes."

5 MR. SOVEL: Objection, your Honor, to anything
6 beyond the answer "Yes," your Honor. The same bases.

7 MR. JACKSON: Your Honor, this touches the root
8 issue, the basic issue in the case. There cannot be any
9 question as to relevancy and as to the question of com-
10 petency. I again offer this for the fact of utterance.
11 It is extremely relevant.

12 THE COURT: I would agree with you here because
13 we have gone beyond what the SEC quoted "tender". You
14 have here what the SEC allegedly said.

15 I am going to admit it for the fact of utterance
16 but not for the truth of the matter asserted. I do
17 believe that under the strict hearsay definition this
18 would be hearsay offered to prove the truth of the subject
19 of this out-of-court statement. I recognize that a point
20 was made in one of the memos that there is a possibility
21 of admissibility under the res gestae exception.

22 There is another comment made somewhere along
23 the line in the communications which constitutes SEC again.
24 I don't know if you would want to make those arguments here,
25 but at this point I am not persuaded by them.

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2 MR. JACKSON: As I understand it, your Honor
3 is overruling the objection at this point?

4 THE COURT: Yes, but so you are clear and when,
5 as and if, you choose to rely on this, I am overruling
6 the objection and permitting you to offer this for the
7 fact of utterance, but, of course, not for the truth of
8 the matter asserted, because at this point in the proceedings
9 I suggest there is a proper hearsay objection to this
10 particular statement being offered for the truth of the
11 matter asserted.

12 The objection is overruled and the evidence is
13 admitted for the limited purpose stated.

14 MR. JACKSON: (Reading)

15 "A Yes. The SEC told us that they wanted to know
16 how compensation had been adjusted in consideration of
17 receiving the service charge.

18 "Q What were the circumstances that led to this
19 request?

20 "A I don't know what you mean by the circumstances
21 that led to it. It was one of the things we wanted to
22 know in monitoring the service charge.

23 "Q Did they explain to you what they wanted to know
24 about?

25 "A Yes. See how the money was being spent; but in

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2 all ways.

3 "Q In all ways?

4 "A Yes.

5 "Q But there is a specific reference to what was
6 being done with the salesmen's compensation, was there not?"

7 MR. SOVEL: Objection, your Honor. The memorandum
8 is in. It is the same objection. He is just referring
9 to the memorandum.

10 I will withdraw the objection on that basis,
11 your Honor.

12 "A Yes. My memorandum here indicates they had a
13 specific interest in the compensation.

14 "Q Did they have any indication as to or suggestion
15 that any action should be or should not have been taken
16 with respect to salesmen's compensation?

17 "A I do not recall that they made any suggestion
18 as to what should be done at that time."

9 "Q Is Exhibit 19 a summary of the replies to the
10 questionnaire that you sent out or to a portion of the
11 questionnaire?

12 "A I believe it is a summary of the replies to the
13 questionnaire that you sent out or to a portion of the
14 questionnaire?

15 "A I believe it is a summary of the non-financial
16 information.

17 "Q Mr. Huntoon, in looking at pages 2 and 3 of this
18 exhibit where the answers are listed, it refers to a No. 13.
19 What is that No. 13?

20 "A May I have back Exhibit 18?

21 "In answer to your question, I don't really know
22 where the 13 comes from, but my understanding of this is,
23 the answer to the question is contained on page 1 of item
24 18, 'Whether and in what manner salesmen's commission
25 compensation has been adjusted in consideration for the

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2 service charge?'

3 "Q That document was prepared by Mr. Castella, not
4 by you?

5 "A This was prepared by Mr. Castella.

6 "Q It indicates your reply to 407 firms?

7 "A Yes.

8 "Q Would that be most of the people you sent it to?

9 "A Yes.

10 "Q Do you have any idea how many people were
11 circulated or circularized, how many firms were circularized?

12 "A Probably a little over 500 firms.

13 "Q Was there at any time a further reply other than
14 to those 407 firms?

15 "A There should have been, but I didn't discover the
16 evidence of it in my search for documents.

17 "Q Did any of the firms, to your knowledge, reply
18 that they had paid commission on the surcharge? Or based
19 on the surcharge, I think is a more correct way of asking
20 it.

21 "A Well, there is quite a difference in your two ways
22 of phrasing the question.

23 "Q Answer it as best you can.

24 "A You will recall in an earlier circular Mr. Haack
25 stated that the underlying commission compensation arrange-

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ments were still a matter left to the discretion of the member firms and from these replies that are -- the category of replies that are here in Exhibit 19 it shows that the increase -- that 6 of the 407 firms increased the percentage of commission paid to salesmen.

"Q From your understanding it means that they increased the basic commission?

"A Yes, that is the basic commission."

1 "A There was another letter dated June 29, a follow-
2 up to the June 18th letter from Mr. Haack, giving more
3 statistical information for the need of the continuation
4 of the service charge."
5

6 At that point, your Honor, there was produced
7 from the files of the Exchange a letter, dated June 29,
8 1970, addressed to the Chairman of the SEC. That document
9 was marked as Plaintiffs' Exhibit 26 for identification.
10 I now offer it in evidence.

11 THE COURT: That will be E for identification.
12 Show it to Mr. Sovel.

13 MR. SOVEL: No objection, your Honor.

14 THE COURT: Received.

15 (Defendants' Exhibit E received in evidence.)

16 MR. JACKSON: Now at page 140, the third question
17 on the page:

18 "Q If there were such meetings, he'd know more about
19 it than you?

20 "A He'd more likely know of such meeting than I,
21 if there was such a meeting.

22 "Q You know of none?

23 "A I know of none. It is not the kind of activity
24 we usually engage in with the SEC.

25 "Q Well, they were provided with a great deal of

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2 financial information.

3 "A Yes. If I understood your question, you asked if
4 we jointly prepared a memorandum.

5 "Q Or assisted them or provided them information
6 which led to the preparation of a memorandum.

7 "A Which led to a memorandum by the SEC staff.

8 "Q Yes, a memorandum relative to the service charge.

9 "A We gave them, as you have seen, a great deal
10 of financial information. I am not sure exactly how they
11 used it. It may well be they used what we gave them.

12 "Q In any event, you are not familiar with any
13 memorandum that may have been prepared?

14 "A Jointly, no.

PORTIONS OF DEPOSITION OF DR. WILLIAM C. FREUND

* * *

15 MR. SOVEL: If your Honor please, the portion
16 will be from the deposition of Dr. William C. Freund,
17 taken February 25, 1972, at the offices of Messrs.
18 Milbank, Tweed, Hadley & McCoy. I will begin on page 3
19 where it reflects that the witness was duly sworn and
20 testified as follows:

21 "Q What is your name?

22 "A Dr. William C. Freund.

23 "Q Where do you live?

24 "A 64 Circle Drive, Millington, New Jersey.

25 "Q Dr. Freund, by whom are you employed?

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Freund

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2 "A The New York Stock Exchange, Inc.

3 "Q How long have you been employed by the New York
4 Stock Exchange?

5 "A Since January 1968.

6 "Q In what capacity?

7 "A I am Vice-President and Economist.

8 "Q Has that been your capacity with them since you
9 came to the Exchange?

10 "A Yes.

11 "Q Were you employed by the Exchange at all prior to
12 that date?

13 "A No."

14 Then on page 6, line 7. It is actually the
15 second complete question.16 "Q Do you have anything to do with the Department of
17 Member Firms?

18 "A No.

19 "Q What Department are you connected with in the
20 Exchange?21 "A I report to the President, but I have reporting to
22 me the Research Department of the Exchange.23 "Q Are you in effect the head of the Research
24 Department of the Exchange?

25 "A Yes.

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2 "Q Now, did there come a time when NERA submitted
3 a report to the Exchange --

4 "A Yes.

5 "Q -- on its findings of the study?

6 "A Yes.

7 "Q When was that?

8 "A That was in February of 1970. It was a
9 preliminary report that NERA made."

10 Continuing on page 8, line 12, the second
11 question:

12 "Q Dr. Freund, when that report was submitted to the
13 Exchange in February of 1969, did it --

14 "A February 1970.

15 "Q Pardon me, February 1970. Did the Exchange take
16 any action with respect to that report?

17 "A Yes, we took the report, the two-volume study
18 without any amendments, and submitted it to the SEC for their
19 information.

20 "Q When was that?

21 "A In February of 1970.

22 "Q Was there any transmittal letter with respect to
23 the report?

24 "A I have not filed in my file any transmittal
25 letter.

"Q Was it just sent down without explanation?

"A To the best of my recollection, it was personally delivered to the Commission.

"Q To whom in the Commission?

"A To the Commissioners. As I recall, there was a meeting with the five commissioners. I am not sure all five were actually present, but with the Commission in February at which this report was presented and discussed.

"Q Were you present at that meeting?

"A I was present at that meeting.

"Q Who else was there?

"A Mr. Haack, Mr. Lasker, who was then Chairman of the Board, I believe Mr. DiNunzio, who was the last Chairman, Dr. Stelzer and I.

"Q This was a private meeting, not a public meeting?

"A Yes.

"Q I take it that the report recommended certain changes in the commission rate structure?

"A Yes."

Continuing on page 11, line 17, the sixth question:

"Q By the way, was any memorandum made at this meeting when the report was submitted?

"A No.

1
2 "Q Any memorandum by you?

3 "A No memorandum that I am aware of.

4 "Q Now, at that meeting was there any discussion as
5 to when the proposed increase or restructured commission
6 rate might go into effect?

7 "A Well, at that time Mr. Haack made a presentation
8 and urged upon the Commission the need for prompt action;
9 that the financial situation was deteriorating rapidly;
10 that there really was an emergency situation prevailing and
11 requested prompt action."

12 Continuing on page 13, line 9, the third
13 question:

14 "Q Was there any transcript made of that meeting?

15 "A I don't know.

16 "Q Was there any other document prepared by the
17 Exchange with respect to that meeting?

18 "A Not that I am aware of.

19 "Q Do you know if any document was prepared by the
20 SEC with respect to that meeting?

21 "A I don't know.

22 "Q Now, did the Commission give you any -- the
23 representatives of the Commission with whom you met, give
24 you any reply with respect to what action they might take?

25 "A No. It was a briefing session, as I recall, and

nothing more.

Page 14, line 7, the first question:

"Q Did there not come a time in March of 1970 when the Exchange proposed that the surcharge -- that they be permitted to impose a surcharge?

"A That's right.

"Q How did that proposal originate?

"A Well, it is really very difficult for me to reconstruct how that happened. There were meetings. There was a meeting with the SEC, a meeting of our Cost & Revenues Committee. There was a meeting of the Board. There were meetings with our Senior Officer. And increasingly it became apparent that the financial situation of the member firms, many member firms, was deteriorating, and we didn't have the luxury of a long wait in the event that the SEC had hearings and in the event the SEC needed extensive time to consider the rather extensive documentation which NERA HAD PREPARED. So I cannot tell you exactly how the surcharge concept developed, but it was during that time that increasing emphasis was given to some interim relief.

"Q Do you know who conceived the idea of the \$15 surcharge or half of the applicable commission, whichever was less?

1 "A I don't know.

2 "Q How did you first learn of it?

3 "A Well, I was involved in these studies, and out
4 of these discussions emerged the notion that some interim
5 relief was essential.

6 "Q Well, didn't someone come up and say, 'Why don't
7 we impose a surcharge?'

8 "A I suppose that is how it happened, but I don't
9 remember."

10 Continuing on page 16:

11 "A I might mention this to you: in the letter that
12 you already have that Mr. Haack wrote -- no, excuse me.
13 There was a letter that Mr. Haack wrote on March 15th.

14 "A (Cont'g) The letter begins with this par agraph:
15 'My staff and our consultant have reported to me the views
16 expressed by your staff at a meeting with them last week
17 and the request for additional data.' That was -- that
18 reference is to a meeting that I attended with Dr. Stelzer
19 and perhaps others, but I am not sure, with the staff of
20 the SEC, Messrs. Pollack and Rappaport, and I am sure there
21 were other SEC staff members there, but am not sure which
22 ones, and it became apparent then that they had requested
23 additional and lengthy documentation that there would be no
24 quick action on the NERA Commission Rate Schedule."
25

2 If your Honor please, at that point there was a
3 document marked as Exhibit No. 39, and I request that
4 that document be produced.

5 THE COURT: That apparently is a letter from
6 the Exchange to the Chairman of the Commission.

7 MR. SOVEL: Yes, sir.

8 THE COURT: All right. Do you have that, Mr.
9 Jackson?

10 MR. JACKSON: Yes, we do, your Honor.

11 MR. SOVEL: If your Honor please, I offer into
12 evidence as Plaintiffs' Exhibit 39, again skipping numbers
13 to coincide with the deposition numbers, that document
14 which was marked as P39 at the deposition of Dr. Freund.

15 THE COURT: Any objection?

16 MR. JACKSON: No objection, your Honor.

17 THE COURT: Received.

18 (Plaintiffs' Exhibit 39 received in evidence.)

19 MR. SOVEL: Mr. Katz, would you continue reading
20 the answer below the offer.

21 "A In fact, you will notice it says that the SEC
22 staff indicated that it may be many, many months before it
23 can complete its review of NERA's proposals.

24 "Q For the purpose of identification, Dr. Freund,
25 Exhibit 39 is the letter of March 13 from Mr. Haack to the

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Freund

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Chairman of the Securities and Exchange Commission?

"A Yes."

Now continuing to page 28, line 2:

"Q Now, you attended a meeting with the Commission on March 17.

"A Yes.

"Q At that March 17 meeting, and any discussions at that meeting held prior thereto, was any consideration given to the question of whether or not the registered representatives would be permitted to obtain, to be paid commission based on the surcharge? Was that issue discussed?

"A I don't remember it having been discussed."

If your Honor please, that completes the portion of the deposition of Dr. Freund that I wish to offer.

PORTIONS OF DEPOSITION OF MR. ROBERT W. HAACK

* * *

11 If your Honor please, I would like to offer a
12 portion of the deposition of Mr. Robert Haack taken
13 April 12, 1972, at the offices of Milbank, Tweed, Hadley &
14 McCloy. I would begin on page 4. It reflects that the
15 witness was duly sworn, testified as follows:

16 "Q What is your name?

17 "A Robert Haack.

18 "Q Where do you reside?

19 "A 108-45 Pleasant Hill Drive, Potomac, Maryland
20 20854.

21 "Q What is your present position?

22 "A I am President of the New York Stock Exchange.

23 "Q How long have you held that position?

24 "A Since September 10, 1967.

25 "Q Prior to that time did you hold any other position

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Haack

2 with the New York Stock Exchange?

3 "A No.

4 "Q And since September you have served solely as
5 President?

6 "A That is correct.

7 "Q You are familiar with the surcharge which is the
8 subject of this lawsuit?

9 "A Yes."

10 Continuing on page 6, line 20, which is the
11 fifth question near the bottom of the page:

12 "Q Now, there came a time, and I believe it was
13 probably somewhere around the beginning of 1970, that NERA
14 submitted its report to you; is that correct?

15 "A That is correct.

16 "Q Do you remember when you received the report?

17 "A I cannot tell you the actual date.

18 "Q That is a two-volume mimeographed report; is
19 it not?

20 "A Right."

21 Continuing at page 10, line 17, which is the
22 second full question on the page:

23 "Q Now, after the report was received by the
24 Exchange, did the Exchange submit it to the Securities and
25 Exchange Commission?

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Haack

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1
2 "A Yes.

3 "Q And were you the person who submitted it to the
4 Securities and Exchange Commission?

5 "A I was one of a group of three, as I recall it,
6 that went down and made a personal presentation of the
7 report to the SEC.

8 "Q Now, who were the other two?

9 "A My recollection is that Mr. Lasker and Mr.
10 DeNunzio. Mr. Lasker was the then Chairman of the Board,
11 and Mr. DeNunzio was Chairman of the Cost & Revenue
12 Committee that focused on this project.

13 "Q Did you meet with the five Commissioners?

14 "A No, we met with -- I know Chairman Budge was
15 there, and my recollection is that Commissioner Owens was
16 there. It was a transmittal without a lot of comment
17 beyond the mere transmitting of it.

18 "Q Was there anyone else th-r- besides the two from
19 the Exchange and the two from the Commissioners?

20 "A I don't recall.

21 "Q Was there any transcript of the hearing made?

22 "A No.

23 "Q Did you submit a statement to the Commission at
24 that time in support of the request for the report?

25 "A No."

Now continuing at page 19, line 3, the first question on the page:

"Q What happened at the meeting with the Commissioners?

"A It was a very short meeting. It was a presentation. It was a physical delivery. We did not get into any of the details. We hoped that they could act promptly and we said that we stood by to speak to any questions that they or the staff of the SEC might, in their analysis, want to ask.

"Q Did they set up any program with respect to analyzing the report at that time?

"A Not at that time, no.

"Q At that time had there been any suggestion made with respect to the adoption of a surcharge?

"A No."

Continuing on page 21, line 23, which is the question at the very bottom of the page:

"Q Now, somewhere along the line here there came a proposal for the surcharge; is that correct?

"A Correct.

"Q What were the circumstances that led to the proposal of the surcharge? Who made the proposal and how was it submitted?

"A There are two prongs to that. Would you repeat that, please?

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2 "Q First of all, what were the circumstances that
3 led to the preparation of the surcharge proposal?

4 "A I think it was basically the fact that some of the
5 questions that were being focused on by both parties to this
6 discussion were, as I say, leading us to think that it was
7 going to be a long, long time before it was resolved, be-
8 cause it is a very complicated sophisticated matter. It
9 was probably as a result of lack of noticeable resolutions
10 of these problems that the matter of some alternative as
11 a temporary device came into discussion.

12 "Q Who felt that there was need for a temporary
13 alternative or who raised this as something that should be
14 considered?

15 "A My recollection is that the matter came as the
16 result of some brainstorming by Dr. Setlzer of NERA who,
17 to my recollection, was the first one to pick up the idea
18 of a surcharge possibility.

19 "Q What did -- how did Dr. Setlzer get into this?

20 "A Well, he was intimately involved on this project
21 because he is the Senior Officer of NERA.

22 "Q Well, why would he propose immediate action,
23 something in the temporary nature rather than his basic
24 report?

25 "A Because it appeared, as I stated before, that the

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Haack

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report was not going to be readily adopted, readily understood. It had a number of complications for the Commission and as well as for the Stock Exchange.

"Q Well, did someone go to Dr. Setlzer and say to the effect that they are not acting quickly and we need temporary relief on this, what do you suggest?

"A Well, my recollection is that we were a little frustrated at the delays, the unlikelihood of quick adoption and Dr. Setlzer advanced the idea of a surcharge on several counts.

"One, the need was very acute, as we are all aware. Two, the idea of a surcharge to him had greater merit in that as a rate-maker it had great flexibility to him because a service charge can be implemented very easily without going into our constitution, bureaucracy and membership approval, and so on. Also, it has flexibility in that -- and Dr. Seltzer, as I recall, at one time even suggested that maybe a surcharge should become a permanent part of the schedule because a fixed commission schedule is never timely. It is good when it comes off the press, but as circumstances change, economics change, it is outdated.

"Do you have another study? Do you go through revenue analysis? Transaction analysis? Do you go through

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Haack

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2 the voting procedure? Or do you just raise the surcharge
3 from \$5 to 10 or 15, and he thought that that idea had
4 great merit.

5 "Q Now, you say we were frustrated. Who are "we"?

6 "A I would say the people of the Exchange community
7 who are anxious for a quick implementation and did not see
8 it coming.

9 "Q Who were these people?

10 "A Well, I would say again they were the staff
11 people of the Exchange who had been working on this,
12 myself, Mr. DeNunzio, the Chairman of the Committee, and
13 Mr. Lasker, the then Chairman of the Board.

14 "Q Well, weren't you getting a lot of inquiry, or
15 perhaps a better word would be pressure, from the members
16 to get them some relief as quickly as possible?

17 "A Well, there was great interest in this problem.
18 I am sure there were a lot of inquiries as to what
19 progress was being made and what was the likelihood of
20 non-disapproval by the SEC.

21 "Q Did those inquiries come to you or through
22 somebody else?

23 "A They came to everybody.

24 " Q And there were plenty of them, were there not?

25 "A Yes."

Continuing on page 27, line 3:

"Q In the discussion of adopting the concept of a surcharge, was any consideration given to the question of whether registered representatives should be permitted to receive commission based on the amount of any surcharge?

"A No.

"Q It was not discussed one way or the other?

"A No.

"Q In considering the concept of a surcharge, were you aware of any rule of the Exchange that would prohibit registered representatives from receiving commission based on a surcharge?

"A I was not."

Page 43, line 20, which is the question at the very bottom of the page.

"Q Did the Exchange ever request a formal clarification from the Commission as to what its position was on registered representatives sharing in the surcharge?

"A No."

Continuing on page 51, line 9, which is the second question:

"Q Do you attend the meetings of the Board of Governors?

"A Yes.

2 "Q Were you present at the meeting when the surcharge
3 was submitted -- the surcharge proposal was submitted?

4 "A I would say, yes.

5 "Q At that time was there any discussion as to
6 the effect of the surcharge rule that the surcharge could
7 not be shared with registered representatives?

8 "A I don't recall.

9 "Q Was any proposal submitted to the Board of
10 Governors which would have amended the rule on special
11 charges to permit registered representatives to share in
12 the surcharge?

13 "A No."

14 Page 56, line 18, the question at the bottom of
15 the page, your Honor.

16 "Q Now, when you were advised of the provision
17 relating to surcharges that prohibited the sharing of
18 special charges with registered representatives, you
19 appreciated that at least in this instance you were
20 regulating compensation of employees of member firms?

21 "A Well, again, in that memo of mine to the members,
22 we did not lay down an inflexible policy.

23 "Q But you did realize, at least to the extent that
24 you were prohibiting them, that they were prohibited from
25 paying commission based on the surcharge, that this was a

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Haack

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change in the prior policy of the Exchange?

"A I am not sure. We were not -- we were still not interfering with the basic right of any management to pay any percentage of the commission that he wanted to. Our concern was with the constitutional restrictions on sharing a service charge with a salesman.

"Q But you realize that you were, at least to an extent, regulating the right of member firms to pay commission to their salesmen, at least to the extent of saying you could not pay it based on the surcharge?

"A Insofar as we were enforcing the constitution, yes.

"Q And to that extent it was a change in the prior policy of the Exchange?

"A Well, we have never had occasion in my experience to be involved with a surcharge which invoked this constitutional provision.

"Q But the surcharge was really an increase in the general revenues of the firms?

"A Yes.

"Q And this was a change in the policy insofar as you were regulating their right to pay commission received as part of their general revenues, the Security Commission income?

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2 "A Well, it depends on whether or not you coalesce
3 a service charge and a commission. If you put it on the
4 basis of gross revenues, perhaps you are correct."

5 That completes what I propose to offer from the
6 deposition of Mr. Haack, your Honor.

7 THE COURT: I think this would be a good time for
8 us to take our recess.

9 Mr. Jackson, you can commence in the morning
10 by reading any portion of this examination which you believe
11 is relevant and material.

12 MR. JACKSON: Thank you, your Honor.

13 THE COURT: We will suspend at this point, and
14 we will resume tomorrow morning at 10:15 a.m. Goodnight,
15 gentlemen.

16 (Adjourned to March 5, 1974, at 10:15 a.m.)
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11 "A When the non-disapproval was granted, there were
12 some statements made and I think they were also in cor-
13 respondence somewhere along the line here, to the effect
14 that this money was to be used to primarily bolster the
15 financial health of the industry; that it was not to be
16 used for other purposes and I have a recollection of one
17 of the Commissioners telling me that it was not to be used
18 to increase the income of salesmen."

19 MR. SOVEL: If your Honor pleases, for purposes
20 of the record I will make my objection and move to strike
21 the testimony.

22 THE COURT: The objection is overruled. The
23 motion to strike that testimony is denied. The court will
24 stand on the prior ruling made, and indicate once again
25 in the record that this is a question of weight. The court

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2 has serious doubts to whether there is very much weight
3 to this particular portion of the answer, and will now
4 look to later testimony to see if possibly weight is added.

5 MR. JACKSON: (Reading)

6 "Q Which Commissioner?

7 "A I cannot say with certainty, but it is my
8 recollection that it was Commissioner Owens.

9 "Q Now, I show you a letter dated April 2, 1970,
10 which was marked Defendant's Exhibit 11 at the Huntoon
11 Deposition.

12 I ask you if you are familiar with that document?

13 "A Yes.

14 "Q That is the non-disapproval of the surcharge?

15 "A Yes.

6 "Q First of all, you have referred to your dis-
7 cussion with Commissioner Owens; is that correct?

8 "(Witness nods head)

9 "A Yes.

10 "Q When did that take place?

11 "A I would say it was some time shortly before the
12 non-objection.

13 "Q Where did it occur?

14 "A My recollection is in Washington.

15 "Q Was anybody else present besides you and Com-
16 missioner Owens?

17 "A Not to my recollection.

18 "Q Did he make specific reference to a registered
19 representatives' compensation?"

20 MR. SOVEL: Objection, your Honor, again on the
21 hearsay basis, the same basis previously made.

22 THE COURT: Yes, indeed. And I understand that
23 the offer here -- well, I will overrule the objection
24 as to the answer presently -- to the present question,
25 which is yes. That is overruled. The next question, I

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resume, is the one you are about to read, is that correct, Mr. Jackson?

MR. JACKSON: Yes, your Honor.

THE COURT: "And he told you." So the prior question can be answered with a "Yes."

MR. JACKSON: (Reading)

"Q And he told you specifically that they are not be paid commission on the surcharge-- based on the surcharge?"

MR. SOVEL: Objection, your Honor, same basis.

THE COURT: I don't know that the answer is really responsive.

MR. SOVEL: Right.

THE COURT: Frankly, gentlemen. I am going to sustain an objection to that question, because I find answer to be not responsive and have little probative value, if any, frankly, and let you then go on to the next question, which really replaces the question and is in proper form, at least.

MR. JACKSON: (Reading)

"Q Could you tell us as best as you can, specifically what was said?"

MR. SOVEL: Objection, your Honor.

THE COURT: And the offer, Mr. Jaffe, is relative

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act of utterance, not for the truth of the matter
is that correct?

MR. JACKSON: Yes, your Honor, that is correct.

THE COURT: Overruled.

MR. JACKSON: (Reading)

Something that this shall be used to gain both
al position affirmed and" --

Excuse me. I am sorry.

THE COURT:--"of the firm," I believe.

MR. JACKSON: Two corrections. --"to aid both the
sition of the firm."

Something that this shall be used to aid both
l position of the firm and it shall not be
ther business promotion purposes, such as advertis-
forth and so on. Nor, should it be used to
ly compensate salesmen.

Did you have any conversations to that effect
ther Commissioner?"

MR. SOVEL: Objection, your Honor, although I
I am not exactly sure if this is the proper
it is to the line of questions that follows.

THE COURT: I will overrule this objection and
answer to be read in.

gain, without being certain, I have a recollection

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1 wch "Haack 207
2 that I discussed the matter similarly with Commissioner
3 Needham.

4 "Q When?

5 "A It must have been about the same time."

6 MR. SOVEL: Pardon me, I am sorry, your Honor.
7 I got confused on the transcript itself.

8 MR. JACKSON: (Reading)

9 "Q What did he say?"

10 MR. SOVEL: Objection.

11 THE COURT: This comes to me in a slightly different
12 light, and I want to explore it with you gentlemen for one
13 moment. The court would take judicial notice of the fact
14 that former Commissioner Needham is presently president
15 of the New York Stock Exchange. Is that correct?
16

5 "Q Now, apparently there is a very close working
6 relationship between you and some of the Commissioners?

7 "A Yes.

8 "Q Does the Commission frequently act by oral
9 discussion with you or do they submit written rulings as to
10 what Exchange activities should -- as to how you should
11 apply your rules?

12 "A Primarily, things are written.

13 "Q And any oral discussion with one member of the
14 Commission is not regarded by you as the action of the
15 Commission?

16 "A It may not be an official action, but it can
17 convey a sense.

18 "Q Pardon me?

19 "A It can convey a sense or a feeling.

20 "Q But, for instance, Commissioner Owens, when he
21 discussed these matters with you, was he purporting to speak
22 on behalf of the other Commissioners as well?

23 "A My recollection is that Commissioner Owens at that
24 time was Acting Chairman. I cannot say this for certain,
25 but a check of the dates will reveal it. I don't know if he

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Haack

2 was speaking for himself or the Commission.

3 "Q And this did not concern you?

4 "A Well -- no, it did not concern me. My primary
5 objective at this time was to see that hundreds of thousands
6 of customers were dealing with firms that were financially
7 solvent, and that was my primary concern throughout, and
8 the way to speak to that concern is to see that the firms
9 retained as much of that surcharge as possible for their
10 own viability."

11 That is all I have to read, your Honor.

12 MR. SOVEL: If your Honor please, I would like to
13 continue directly with the next question on page 53.

14 THE COURT: You may.

15 MR. SOVEL: (reading)

16 "Q And therefore you were quite satisfied with the
17 rule that would prohibit registered representatives from
18 sharing in these surcharges?

19 "A I did not object to it.

20 "Q You were satisfied with it?

21 "A Yes."

22 Thank you.

23 MR. JACKSON: May I read the next question?

24 THE COURT: Of course.

25 MR. JACKSON: (reading)

PORTIONS OF DEPOSITION OF DR. IRWIN STELZER

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Haack

"Q It served your purposes?

"A It conformed to our Constitution."

THE COURT: Anything else, gentlemen, from the deposition of Mr. Haack?

MR. SOVEL: Would your Honor indulge me one minute. I think I may.

(Pause)

MR. SOVEL: No further questions, your Honor.

THE COURT: Now that we have concluded reading from the deposition of Robert Haack, you may proceed, Mr. Sovel.

MR. SOVEL: If your Honor please, I would now offer a portion of the deposition of Dr. Irwin Stelzer. Do we have another copy of Stelzer? If I can get one for the witness, I can give you my copy.

THE COURT: Thank you very much, Mr. Sovel. Can someone assist by lending on a temporary basis another copy of that deposition?

I see we have a gentleman here who is kindly volunteering to assist us.

MR. SOVEL: If your Honor please, the deposition of Irwin M. Stelzer was taken on June 15, 1972, at the offices of Milbank, Tweed, Hadley & McCloy. I will begin reading on page 4, which indicates that the witness was duly sworn and testified as follows.

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Stelzer

2 "Q Would you state your full name, please.

3 "A Irwin M. Stelzer.

4 "Q And what is your address?

5 "A My business address is 80 Broad Street, New York
6 City.

7 "Q Is it Dr. or Mr. Stelzer for this purpose?

8 "A Whichever you prefer.

9 "Q What is your occupation?

10 "A I am an economist.

11 "Q AND are you employed by any association or group?

12 "A I am employed by a firm, National Economic
13 Research Associates.

14 "Q In what capacity?

15 "A I am president of the company.

16 "Q How long have you been employed by this firm?

17 "A Eleven years.

18 "Q In the course of your association with National
19 Economic Research Associates, were you or the firm retained
20 to prepare any study for the New York Stock Exchange?

21 "A Yes.

22 "Q And would it be convenient to refer to your
23 organization simply as NERA?

24 "A We have a large public relations effort in that
25 direction.

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Stelzer

2 "Q When was NERA first contacted to perform a study
3 for the Stock Exchange?

4 "A Along around the beginning of 1967.

5 "Q By whom in the Exchange were you contacted?

6 "A I think it was Bob Bishop and Tom Kane.

7 "Q What were you requested to do for the Exchange?

8 "A Well, Mr. Bishop came in to see me, and he said he
9 had heard we were reasonably expert in rate matters and
10 that the Exchange was in the throes of considering the
11 first revision in a very long while of its rate structure
12 and rate level, and that there was increased interest on
13 the part of the Exchange community and the SEC in developing
14 other than an ad hoc kind of rate schedule, and they asked
15 would we consider whether we could develop some criteria
16 to which they might repair in making these rate adjustments.

17 "Q This was, in fact, in 1967?

18 "A Yes.

19 "Q And did you at that time undertake to do this
20 work for the Exchange?

21 "A Yes, we accepted a limited engagement from the
22 Exchange to give them our views on appropriate rate-making
23 techniques which might be applied to brokerage rates.

24 "Q Did you submit a report to them?

25 "A Yes, we did. It was around, I think, the summer
of 1967. It was not a long engagement at that point.

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Stelzer

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2 "Q And was that a written or oral report?

3 "A It was a written report.

4 "Q This report dealt with rate-making techniques as
5 differentiated from a specific rate recommendation?

6 "A That is right, we had not analyzed any specific
7 cost data or anything else. We tried to set forth for
8 them our general notions of how rates might be made so that
9 they could make some decision as to whether those notions
10 were suitable or appropriate before spending a whole bunch
11 of money on pursuing it.

12 "Q Did there come a time when they retained you for
13 a further project?

14 "A Yes.

15 "Q When was that?

16 "A That was in -- sometime around the beginning of
17 1968. Sometime, I think, around the end of the first
18 quarter or thereabouts.

19 "Q Who contacted you at that time?

20 "A That was Dr. Freund.

21 "Q What was the nature of the contact at that time?

22 "A Well, Dr. Freund said that they were now seriously
23 approaching the problem of pursuing the question of actually
24 designing rates, and he read our report and decided we were
25 professionally competent economists, and was impressed by

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2 it and wanted us to pursue the lines of reasoning we had
3 set out in that report."

4 Now continuing over at page 17, line 17, which is
5 the fourth question:

6 "Q Now, sometime in the beginning of 1970 you submitted
7 a report to the Stock Exchange?

8 "A Yes, February."

9 Continuing now over at page 31, on line 19, which
10 is the question at the bottom of the page:

11 "Q Did there come a time, sometime after or around the
12 time that you submitted the February Report, that you were
13 consulted with respect to what might be done for some
14 immediate relief in terms of a commission increase?

15 "A Yes

16 "Q When and by whom?

17 "A Well, after we submitted the February Report, it
18 became clear that the staff process of checking and
19 reviewing would take some time.

20 "Q Which staff?

21 "A The SEC staff.

22 "I believe Mr. Rappaport, who was -- he had some
23 title at the SEC, a lawyer -- indicated that they would
24 need until at least September to begin to check the data.
25 This caused some consternation on the part of the Stock

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2 Exchange, and we had some discussions on whether some
3 immediate relief might not be secured in some way. You
4 know, it is quite traditional in the regulated context to
5 try to separate the question of how many dollars you need
6 from where in the rate structure you are going to get
7 dollars, because the latter is a much more complicated
8 question because political and other matters enter into who
9 is going to pay the bill. Whereas the determination of the
10 amount of dollars needed is a bit more or appears to be a
11 bit more of a precise exercise.

12 "Q I don't know if you answered when or by whom.

13 "A Shortly thereafter --

14 "Q Which would be shortly after February? It would
15 be sometime in February?

16 "A It could have been March. When it became clear to
17 us that the checking process would be protracted.

18 "Q Right, and by whom?

19 "A Mr. Haack, Mr. DiNunzio, Dr. Freund, Mr. Lasker.

20 "Q And what were you asked to do?

21 "A Well, we had a couple of brainstorming meetings
22 in which we discussed whether some alternative interim
23 measures might ~~not~~ be developed to give the essential relief
24 that the industry then needed because of the financial
25 conditions in which it found itself.

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2 "Now, you know, I think it is more than one meet-
3 ing, but how many I really don't remember. There was an
4 ongoing discussion.

5 "Q Did there come a time when the concept of the
6 surcharge was discussed?

7 "A Well, there was a terminology problem. There was
8 a time when a more simplified method of getting the
9 industry revenue requirement was discussed, namely a flat
10 charge. What -- whether that was precisely then called a
11 surcharge or anything else, I don't know, but the attempt
12 was to abstract from the rate structure issue and get down to
13 just considering the revenue requirement question.

14 "Q Who conceived the idea of this charge?

15 "A This is hard to say. It grew out of discussions.
16 I probably had a lot to do with it, but I don't know if it
17 was precisely my sitting there and saying, 'Eureka, I
18 thought of something. Let's have a flat charge.' It came
19 out of the discussions, and when it arose had certain very
20 definite appealing regulatory and economic characteristics
21 which led me to approve it, if not concoct it.

22 "Q Did you work out various formulas or did you
23 play around with various formulas or various amounts of a
24 flat charge?

25 "A Well, we first -- the answer to your question is

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2 yes.

3 "Q What did you first do?

4 "A Okay. I am trying to be more responsive. The
5 first thing we did was, we said we know one thing. We know
6 that our findings that the industry needs 438 million
7 dollars in added revenues are reasonably firm. Certainly,
8 it would not be reasonable to ask the SEC for more than
9 that.

10 "It would not be appropriate, given the financial needs
11 of the community and the minimal nature of our request, to
12 ask for less than that. So how do we get 438 million
13 dollars without getting into the very complicated cost
14 analysis that we had.

15 "We knew also that there were a few constraints
16 operating. One was that our cost findings had been
17 sufficient that it did not seem appropriate to put any
18 charge on very large orders, let's say, above one thousand
19 shares, because that is not where the revenue shortfalls were
20 coming from. We also knew that there would have to be some
21 limitation on the percentage increase on the very small
22 orders, because the SEC had made very clear that it was not
23 prepared for the 100 percent and 200 percent increases in
24 charges to the very small investors, and again this is quite
25 a common thing in regulations, a minimum-use customer being

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3 numerous is generally the repository of the political
4 concern and sympathy of a regulatory agency.

5 "So we said, all right, starting with 438 million
6 as the requirement -- incidentally, in that connection, if
7 I can, the -- that is the right figure, the figure that Mr.
8 Huntoon has on his deposition on page 24 is wrong. The --
9 we designed several alternatives. I believe we considered
10 a \$12 --

11 "Q Excuse me, before you get into that.

12 "A Can I just finish the answer?

13 "Q Yes.

14 "A We tried out a \$12 surcharge with a 60 percent
15 limitation on investment."

16 Excuse me, that word is a 60 percent limitation on
17 increases."

18 "We tried out a \$15 surcharge with a 50 percent
19 limitation. We tried several variants of the notion, all
20 designed to yield the minimum revenue requirement we
21 determined in our February Report that the industry would
22 have to have in order to earn a 15 percent -- in order to
23 have the opportunity to earn a 15 percent return on invested
24 capital.

25 "Q What statement by Mr. Huntoon is wrong and what is

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2 correct?

3 "A Mr. Huntoon has some number in his deposition
4 which I remember of 660 million dollars, as being what was
5 the revenue requirements, and that is on page 24 of his
6 deposition. That is wrong.

7 "Q What did you determine it to be?

8 "A 438.4 million.

9 "Q Now, after you worked around with these various
10 formulas, you came up with a recommendation, did you not?

11 "A I think we offered the Exchange a couple of
12 alternatives, and the two that I specifically remember were
13 the \$12 with the 60 percent limitation, and the \$15 with
14 a 50 percent limitation, and I think they selected the
15 latter."

16 If your Honor please, that completes the portion
17 of Dr. Stelzer's deposition that I wish to offer.

18 MR. JACKSON: If your Honor pleases, I would like
19 to pick up where Mr. Sovel left off on page 38.

20 THE COURT: This is on page 38?

21 MR. JACKSON: Yes.

22 THE COURT: The last question on the page?

23 MR. JACKSON: Yes, your Honor.

24 THE COURT: Proceed.

25 MR. JACKSON: (reading)

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2 AFTERNOON SESSION

3 2:30 p.m.

4 THE COURT: You may proceed, Mr. Sovel.

5 MR. SOVEL: If your Honor please, in accordance
6 with our off-the-record discussion immediately preceding
7 lunch, it is my understanding that all the admissions con-
8 tained in the answers filed by any of the parties are
9 deemed part of the record without any further formal
10 admission and may be referred to by me in any presentation
11 I make in the case.

12 THE COURT: As a matter of fact, may be referred
13 to by any counsel in their presentation insofar as it
14 relates to a particular issue as represented by the
15 complaint, your second amended complaint in this case and
16 of the respective defendants' answer.

17 Is that agreeable to you, Mr. Jackson?

18 MR. JACKSON: Yes, it is, your Honor.

19 THE COURT: Mr. Schwartz?

20 MR. SCHWARTZ: Yes, your Honor.

21 THE COURT: Do any of the other counsel demur?
22 Hearing no demurrer, then we will proceed in that vein.
23 Anyone may refer to the pleadings directly as they relate to
24 any matter in this case, and those matters admitted in the
25 pleadings will be taken as admitted with respect to the

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2 case against the particular defendant who has admitted
3 particular allegations on the complaint.

4 MR. SOVEL: If your Honor please, for the purpose
5 of simply filing my offers from the interrogatories, I
6 would request, No. 1, that each of the defendants stipulate
7 that all the broker defendants, that is, all the defendants
8 except the New York Stock Exchange, were member firms of
9 the New York Stock Exchange and members of the Association
10 of Stock Exchange Firms. That information is developed
11 in the interrogatories, and I offer it as evidence against
12 all defendants.

13 THE COURT: Let me inquire whether there is any
14 defendant who does not agree to that limited stipulation.

15 MR. SCHWARTZ: Your Honor, I know that all of
16 my clients are member firms of the Exchange. I simply do
17 not know whether they are all member firms of the ASEP.
18 If Mr. Sovel tells me that we have admitted that in a
19 prior interrogatory, I will accept that.

20 MR. SOVEL: If you will refer to Interrogatory
21 No. 11 of each of your clients, you will find that admission.

22 MR. SCHWARTZ: I will accept that presentation.

23 MR. LIPSITZ: I represent Pressman, Frohlich &
24 Frost, and in behalf of our client we had answered the
25 Interrogatory No. 11 "No."

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2 MR. SOVEL: Your Honor, I will accept that. I
3 might add that this particular set of answers was just
4 delivered to me today, and I had not reviewed it beforehand.
5 I apologize.

6 THE COURT: We will get to Mr. Jackson in a
7 moment, because I think he would want to state his position
8 on the record, but is there any other defendant than
9 Pressman, Frohlich & Frost who wishes to demur or take issue
10 with the proposed stipulation?

11 MR. PALMER: Your Honor, for W. E. Hutton, I am
12 aware of the fact that the defendant was a member of the
13 New York Stock Exchange. I find myself in Mr. Schwartz's
14 position with respect to membership in the ASEP. I will
15 rely on Mr. Sovel's representation that we replied to
16 Interrogatory No. 11 in the affirmative if he says so.

17 THE COURT: That was W. E. Hutton?

18 MR. SOVEL: Your Honor, they so stated in Answer
19 No. 11 to their interrogatory.

20 THE COURT: Very well.

21 Mr. Jackson, I think the Exchange is in a somewhat
22 different position, and I was wondering, Mr. Sovel, if
23 you offer this stipulation only as to the member firms and
24 not to the Exchange itself.

25 MR. SOVEL: Yes, your Honor, I do. I had offered

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2 previously separate admissions as to the Exchange. While
3 I don't recall them specifically at this moment, whatever
4 they are, the record will show and the stipulations refer
5 only to the member firms.

6 MR. JACKSON: They are not offered against the
7 Exchange?

8 MR. SOVEL: They are offered for whatever purposes
9 they can be offered for.

10 MR. JACKSON: Your Honor, then I object.

11 MR. SCHWARTZ: Your Honor, in agreeing to so
12 stipulate, I should not be construed as agreeing this is at
13 all relevant.

14 THE COURT: I would think not. I would suggest
15 it is a fact; I would reserve to you the right to argue that
16 it is not a relevant fact. Is that fair?

17 MR. SCHWARTZ: Yes, sir.

18 MR. JACKSON: My position, in addition, your
19 Honor, is that the fact, if it be a fact, that all or some
20 of the member firms happen to be members of the ASEP is a
21 fact which is totally irrelevant, the only issue in this
22 case, as I understand it, being whether member firms' adherence
23 to a rule of the Exchange constituted an antitrust violation.

24 THE COURT: I think you have stated certainly a
25 substantially relevant point. At the same time I think I

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2 have covered the matter by my response to Mr. Schwartz.

3 We will consider the fact, except as it relates to
4 the New York Stock Exchange and except as it relates to
5 Pressman, Frohlich & Frost, Inc.'s membership in ASEF to be
6 an admitted fact, with all parties reserving to themselves
7 the position to argue that this is not a relevant fact.

8 MR. SOVEL: If your Honor please, I would next
9 offer as an admission that none of the broker defendants
10 paid commission based on the surcharge. I offer that
11 admission.

10 MR. STEIN: Your Honor, I might say that the
11 practice in that regard is even more clearly spelled out
12 in Exhibit 4 annexed to the affidavit, which is a
13 memorandum, dated April 10, 1970.

14 THE COURT: This is signed by R. C. Van Tuile.

15 MR. STEIN: And particularly the penultimate
16 paragraph beginning, "Recognizing the effect upon RE" --
17 which was our euphemistic term for registered representa-
18 tives.

19 MR. SOVEL: As to the defendant Shearson Hammill,
20 I offer Exhibit 4 to their answers to interrogatories.
21 That will be my offer as to them as to what their practices
22 were.

23 THE COURT: I think that is satisfactory.

24 MR. STEIN: We are delighted to have that.

25 THE COURT: Fine. Relative to the other broker

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2 defendants, is there anyone else who takes issue with Mr.
3 Sovel that no portion of the surcharge was paid over to the
4 registered reps?

5 MR. PROYECT: On behalf of Harris Upham, I would
6 like to make it clear that we do not directly, that is
7 directly from the surcharge pass on directly to the
8 registered representatives, but indirectly they received the
9 benefits of the surcharge.

10 THE COURT: You are saying that Harris Upham --
11 let me see if I have got your position straight -- you are
12 saying that when the increased income began flowing as a
13 result of the surcharge, the underlying commissions
14 received by Harris Upham registered representatives were
15 increased in some way?

16 MR. PROYECT: Well, your Honor, I don't want to
17 characterize what was said, but I want to make it clear
18 that our registered representatives received some benefit
19 from the surcharge and that it may not have been directly
20 as a percentage of the surcharge or directly based upon the
21 surcharge, but as a result of the surcharge and increased
22 revenues to our client they benefited. So that, stating it
23 another way, we cannot say definitely that they received
24 nothing as a result of the surcharge, they did receive
25 something, but it is not a direct relationship on a

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2 percentage basis.

3 THE COURT: Folks, if a Harris Upham salesman was
4 receiving a commission prior to the imposition of the
5 surcharge, say, 30 percent -- I am just picking a number at
6 random out -- when the surcharge increase came in, and I
7 assume for the moment that that would be for my purposes
8 \$15 -- am I correct that Harris, Upham did not immediately
9 raise the commission of each registered representative
10 an additional 30 per cent of \$15 for each of the covered
11 transactions?

12 MR. PROYECHT: That is correct, your Honor.
13 We did not, but we do have a pension plan, and several
14 of the registered representatives have equity interests
15 in Harris, Upham, so any benefit derived by Harris, Upham
16 then flowed to the registered representatives having an
17 equity interest therein or those involved in the pension
18 plan, the pension plan being funded by Harris, Upham.

19 THE COURT: Did all of the registered representatives--

20 MR. PROYECHT: No, sir.

21 THE COURT: -- participate in that regard?

22 MR. PROYECHT: No, sir. Some of them did, though.

23 THE COURT: Could you, if called upon to do so,
24 furnish actuarially figures which would lead to the conclusion
25 that those who participated, either as participants in

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2 the pension program or otherwise, in fact benefited in
3 precisely the same percentage arrangement, or did it vary?
4 Are you just saying there was an increase, when the firms'
5 income increased, there was an increase, but they were not
b2 6 in any way mathematically consistent?

7 MR. PROYECT: It would be difficult for me now
8 to respond to that. I would have to check with our account-
9 ants.

10 THE COURT: Let us then for the present purpose
11 accept only whatever answer Harris, Upham chose to make
12 to this particular interrogatory.

13 For the purpose of the plaintiffs' presentation,
14 I will accept your answer to the particular interrogatory
15 as he will now read it into the record as your limited
16 admission.

17 Obviously, you would have the right on the
18 defense case to present anything you wish.

19 MR. PROYECT: Your Honor, we had, along with,
20 I believe, Reynolds & Company, made a motion for summary
21 judgment. Our supporting papers in that motion for
22 summary judgment contain an affidavit of an officer of
23 Harris, Upham, which I believe clarifies our answer to
24 the interrogatory in question.

25 Therefore, I would appreciate that affidavit,

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2 which I will mention, be included in our limited ad-
3 mission.

4 THE COURT: Let me suggest that at this stage,
5 since the plaintiff is making his presentation, I will
6 let him make it. If you thereafter want to submit anything,
7 you may do so.

8 MR. PROYECT: It is a part of the record, your
9 Honor.

10 THE COURT: Yes, indeed it is.

11 However, let me just go on, not quite that much
12 part of the record. Where an answer frames issues, affi-
13 davits submitted on an unsuccessful motion for summary
14 judgment -- and I think your motion, if my recollection
15 is correct from yesterday, was denied -- I would suggest
16 that we cannot try this by affidavit, and therefore I
17 am permitting them to put in your admissions, which they
18 could properly do in a proper form.

19 I would suggest if you wish to present the
20 affidavit, and he will stipulate to accepting the affidavit,
21 I will permit it in evidence. If not, a live witness might
22 be required if you are so advised.

23 MR. PROYECT: I assume, your Honor, when we
24 put on the defense that we will contest, at that point
25 we will clarify this.

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2 THE COURT: You had better get ready because
3 I think it is going to be very soon, like tomorrow. I think
4 we will find that when we have concluded today we will be
5 moving tomorrow morning to the defendants' case.

6 MR. PROYECT: Thank you, your Honor.

7 THE COURT: You may be behind some of the others
8 here who want to go first, but we are going to try to move
9 things along.

10 What is the admission of Harris, Upham?

11 MR. SOVEL: If your Honor please, Interrogatory
12 No. 10 stated: "With respect to the service fee referred
13 to in paragraphs 29 and 30 of the amended complaint, state
14 whether you had paid any commission or other compensation
15 to securities representatives (registered representatives)
16 employed by you, based on the amount of such service fee
17 collected by you from your customers?"

18 "Answer: Defendant Harris, Upham & Co., Inc.,
19 has not paid any commission or other compensation to
20 registered representatives it employs based upon the
21 amount of the service fee referred to in paragraphs 29
22 and 30 of the amended complaint."

23 I offer that admission.

24 MR. SOVEL: If your Honor please, I would at
25 this point request to have marked as a plaintiffs' exhibit

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2 that document which was Exhibit 4 to the Shearson,
3 Hamill interrogatories.

xx4 (Plaintiffs' Exhibit 66 marked for identification.)

5 MR. SCHWARTZ: This is only offered as against
6 Shearson, Hamill,. I take it?

7 MR. SOVEL: Yes.

8 THE COURT: Any objection?

9 MR. STEIN: No, your Honor. I think it might
10 correctly be described as Exhibit 4 to the motion for
11 summary judgment.

12 MR. SOVEL: Pardon me, he is correct, your Honor.
13 I erred in that.

14 THE COURT: That is the identification, and,
15 as I understand it, it was a memorandum of Mr. Van Tuile,
16 and there is no objection.

17 MR. STEIN: No objection, your Honor.

18 THE COURT: Exhibit 66 received.

19 (Plaintiffs' Exhibit 66 received in evidence.)

20 THE COURT: That is received only against the
21 defendant Shearson, Hamill, of course.

22 MR. SOVEL: If your Honor please, I request
23 each of the broker defendants to stipulate, and in re-
24 questing this stipulation I am referring to their answer
25 to interrogatory number 28 that the funds which they

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2 derived from the service fee were used for the general
3 operational purposes of their firms and not applied to
4 providing any particular service for the customer.

5 THE COURT: Is there anyone who declines to so
6 stipulate among the broker firm defendants?

7 MR. STEIN: Your Honor, I am not quite certain
8 what stipulation is being requested, but with regard to
9 Shearson, Hamill again, we would stipulate in accordance
10 with our answer to interrogatory number 28 that amounts
11 received by defendant Shearson, Hamill Co., Inc., by virtue
12 of the interim service charge were utilized for the operations
13 of the said defendant.

14 MR. SOVEL: That is fine.

15 THE COURT Is there anyone who demurs to that
16 stipulation as proposed by Mr. Sovel and as restated just
17 now by Mr. Stein?

18 MR. SCHWARTZ: I don't like to be difficult, your
19 Honor.

20 THE COURT: Go ahead.

21 MR. SCHWARTZ: But I think I would prefer to
22 read for the record the answers given by our four clients
23 to that interrogatory which more precisely state the facts
24 as it relates to them.

25 That answer is as follows:

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2 "Amounts attributable to the service charge
3 were not allocated for specific expenditures. However,
4 portions of these sums, together with other revenues
5 received during the period in question, were used by
6 Bache, Kidder, Peabody, Dean Witt, and Smith, Barney to
7 make significant improvements in their clearing and other
8 operations."

9 THE COURT: Does anyone else wish to speak to
10 the same matter as Mr. Schwartz has just spoken to? If
11 so, he may do so.

12 MR. SOVEL: If your Honor please, before you get
13 to that, I would move to strike the portion of the answer
14 beginning with "However," as not being responsive to the
15 question and not being necessary to complete the answer
16 to the question posed. When you ask an interrogatory,
17 you are not supposed to get an answer to another one,
18 self-serving that it is.

19 MR. SCHWARTZ: Does your Honor have in mind
20 the question that was asked in the interrogatory?

21 THE COURT: Let me hear the question and then
22 let me hear your answer again.

23 MR. SCHWARTZ: The question, may it please
24 the Court, is:

25 "State whether amounts received by you by virtue

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2 of the surcharge were allocated for specific expenditures
3 or were utilized for the general operations of your firm."

4 The second part of the answer, I submit, is
5 clearly responsive to what follows "or."

6 THE COURT: Let me hear your answer again, Mr.
7 Schwartz.

8 MR. SCHWARTZ: "Amounts attributable to the service
9 charge were not allocated for specific expenditures. How-
10 ever, portions of these sums, together with other revenues
11 received during the period in question, were used to
12 make significant improvements in clearing and other
13 operations."

14 THE COURT: You persist in your objection,
15 Mr. Sovel?

16 MR. SOVEL: Your Honor, I will withdraw it, because
17 I think it is sufficiently explanatory on its own and I
18 can argue it at some future date.

19 Perhaps at this point, rather than burdening
20 everyone with coming through with their specific answers,
21 why not just deem everyone's answers to number 28 incorporated
22 by reference into the record?

23 THE COURT: Are there other people who wanted to
24 speak? If there is just one more person or two more people,
25 I might just let him speak and then we will have everything

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2 clear before us. I think those who have spoken have put
3 the general proposition forward. I would like to hear if
4 anyone else wishes to speak.

5 MR. LEVENTON: Do I understand Mr. Sovel is
6 withdrawing his prior stipulation and substituting this
7 last statement as a new stipulation to incorporate our
8 answers to the interrogatories as stated in our replies?

9 THE COURT: He is prepared to do that unless you
10 gentlemen are prepared to rest on his initial stipulation.

11 MR. WAILAND: His initial stipulation did not
12 reflect the question that he asked.

13 THE COURT: No, he tried, I think, to simplify it
14 and basically what he was seeking in the form of a stipula-
15 tion, as I understand it, was whether any portions of the
16 service charge was passed on. I think this is what is
17 germane here, whether any portions of the service charge
18 or surcharge were passed on to the registered representatives.

19 Mr. Stein spoke to that.

20 Mr. Schwartz answered in a somewhat different
21 context. If anyone else wants to speak to the subject
22 matter, I will hear him, put it in the record, and then
23 we will proceed.

24 MR. WAILAND: My answer is the same as Mr.
25 Schwartz's.

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2 THE COURT: Very good.

3 MR. WAILAND: I would like that on the record
4 as well.

5 Your Honor, unless Mr. Sovel has withdrawn his
6 original offer, I think what he attempted to have us
7 stipulate was whether any funds received through the sur-
8 charge were used for customers' services.

9 MR. SOVEL: No.

10 THE COURT: I did not hear it that way.

11 MR. WAILAND: That is precisely what he said.

12 MR. SOVEL: Whether it was used to furnish
13 a specific service for a customer.

14 THE COURT: I am sorry, I misstated it, and I
15 would stand corrected on the record.

16 Let me have the stipulation clearly set forth.

17 MR. SOVEL: If your Honor please, I think if I
18 may, to simplify it, I will just offer everyone's answer
19 to interrogatory number 28 as they stated in their respective
20 answers to interrogatories and without reading each one
21 separately into the record.

22 THE COURT: All right. Each of you now must deal
23 with his answer to interrogatory number 28. I will accept
24 those, and any commentary in connection with this case
25 and any argument can refer to that interrogatory and the

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2 particular answer as it relates to the particular person
3 who is answering.

4 MR. SOVEL: May I also, just for the purposes
5 of keeping the record clear, your Honor, state that some
6 of the defendants in answering the interrogatories combined
7 their answer to 27 and 28 in a single answer, and in such
8 cases I offer that entire answer.

9 THE COURT: All right.

10 MR. SOVEL: As part of 28.

11 THE COURT: That seems logical. Does anybody
12 object to doing it this way? Seeing and hearing no ob-
13 jections, we will let the answers to interrogatories 27
14 and 28 be relied upon in any way that any party who is tied
15 into those, that is, the plaintiff as to all of you and
16 the respective broker defendants as to their respective
17 answers, and you may utilize those in connection with your
18 arguments in any way you deem pertinent in this case.

19 MR. SOVEL: Trying to proceed in the same way,
20 your Honor, interrogatories numbers 7, 8 and 9 request
21 each of the member firms to set forth the basis of their
22 compensating of their employees as of September 1st, their
23 registered representative employees from September 1, 1969,
24 and then subsequently requests information as to changes
25 in those commission rates.

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2 In some instances part of the answers are ob-
3 jected to. Sometimes the answers are combined. Rather
4 than asking for each one separately, I would offer the
5 answers of each of the broker defendants to 7, 8 and 9
6 to the extent that they are answered by that respective
7 defendant and with my right on my behalf to refer to any
8 part of their answers to 7, 8 and 9.

b4 9 THE COURT: Anyone object to that?

10 MR. SCHWARTZ: I don't object to that, your Honor.
11 but I think for your information I should make one observa-
12 tion about what these answers show, which may be relevant
13 this afternoon or tomorrow morning.

14 I think it is fair to say they show an almost
15 incredible diversity in patterns of compensation ranging
16 from percentages, but to what the percentages apply.

17 MR. SOVEL: If your Honor please, as part of
18 that offer and just to make sure that it is offered in
19 its entirety, I would also incorporate by reference Exhibit
20 B to the answers submitted by Harris, Upham & Company,
21 Exhibit 9A to the answers submitted by Loeb, Rhoades &
22 Company, and schedule A to the answers submitted by Thomson
23 and McKinnon Auchincloss, Inc.

24 THE COURT: Are they the only responding
25 defendants who annexed exhibits to their answers to

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2 interrogatories 7, 8 and 9, or have you selected them
3 particularly?

4 MR. SOVEL: I think the answer to your question,
5 your Honor, without going through it again is yes. In
6 certain instances they just answered the question by saying,
7 "See Schedule A" or "See this exhibit."

8 THE COURT: Of course, that would be an incorpora-
9 tion by reference.

10 MR. SOVEL: I am just offering that.

11 THE COURT: For completeness, I understand it.
12 I can find no objection to that procedure. I find it
13 to be mechanical and proper.

14 MR. SOVEL: That completes my admissions from
15 the pleadings, your Honor, and the interrogatories.

16 If I can take a moment here, your Honor.

17 (Pause)

18 MR. SOVEL: If your Honor please, I now propose
19 to read very briefly from the depositions of the two named
20 plaintiffs in this case, John Jacobi and Robert Gambera.
21 Since I am going to read only a short portion, I thought
22 I would read the questions and answers myself rather than
23 having Mr. Katz act another part.

24 THE COURT: Is there any objection to Mr. Sovel
25 reading from the depositions of the two named plaintiffs?

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2 MR. SCHWARTZ: We want to see what he wants
3 to read, your Honor.

4 MR. SOVEL: Your Honor, neither one is in the
5 jurisdiction.

6 THE COURT: I have Mr. Jacobi apparently a
7 resident of South Fraser, Michigan, which is beyond this
8 district, and the other gentleman likewise?

9 MR. SOVEL: California.

10 THE COURT: You may proceed.

11 MR. SOVEL: If your Honor please, the deposition
12 of L. John Jacobi was taken on March 10, 1971, at the
13 offices of Milbank Tweed Hadley & McCloy. At that point
14 he was examined by Mr. Maney of the firm of Sullivan &
15 Cromwell and he testified as follows:

16 "Q Mr. Jacobi, by whom are you employed?

17 "A Right now"--

18 Page 6, line 23 --

19 "Right now I am employed by Chamberlain Real
20 Estate.

21 "Q And how long have you been employed by that
22 company?

23 "A Since the end of July 1970 or the first part
24 of August 1970.

25 "Q And prior to that time, by whom were you employed?

1 eoh.

"Jacobi

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2 "A I was discharged from Goodbody & Co. on the
3 27th of May 1970.

4 "Q You were not employed between May 27th and the
5 end of July?

6 "A No, I was not.

7 "Q How long have you been employed by Goodbody &
8 Co.?

9 "A For 14 years.

10 "Q Do you recall the date of your commencement of
11 employment with Goodbody?

12 "A Not the exact date, no.

13 "Q Would it be approximately June 1957?

14 "A Approximately June 1957.

15 "Q Did you occupy more than one position or title
16 with Goodbody during the 14 years you were employed?

17 "A No. I was a registered representative.

18 "Q Is that also known as an investment executive?

19 "A Right."

20 On page 32, line 15.

21 "Q When you started with Goodbody & Co., did you
22 get a commission on sales of securities?

23 "A No, I do not believe that I did.

24 "Q Did you at some point go on a commission basis
25 of compensation?

1 eoh

"Jacobi

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2 "A Yes, I did.

3 "Q Were there different rates of commission payable
4 on the sale of listed or unlisted securities?

5 "A As I recall, there was.

6 "Q Do you recall about what time this was, point
7 of time?

8 "A The time that I went on commission basis, you
9 mean?

10 "Q Yes.

11 "A I would say within the first year that I was
12 with Goodbody.

13 "Q Did you get a different rate of commission on
14 sales of mutual fund shares?

15 "A I believe so.

16 "Q Did you receive any bonuses in addition to com-
17 missions?

18 "A As I recall, no.

19 "Q Now, going to the beginning of September 1969,
20 do you remember what your rate of compensation was at
21 that time?

22 "A If I remember, I believe it was in this manner:
23 I believe it was approximately one-third of listed, 40 per
24 cent on over-the-counter and 50 per cent on mutual funds.

25 "Q And there was no salary paid in addition to this?

1 eoh

"Jacobi

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2 "A No.

3 "Q No bonus paid?

4 "A No.

5 "Q Was this rate of compensation regardless of
6 the volume?

7 "A I believe there might have been some bonus
8 paid, if you got into what we called the big producer
9 range.

10 "Q Was this commission rate payable, regardless
11 of the identity of the customer?

12 "A I don't know what you mean by that, sir.

13 "Q Did you get the same rate of commission if you
14 were acting as broker for an institutional investor as
15 you would for a retail customer?

16 "A I believe so, yes."

17 Continuing on page 43, line 22.

18 "Q Did you receive any compensation with respect
19 to any transactions in which a surcharge was imposed?

20 "A We did not receive any portion of the surcharge.

21 "Q At any time?

22 "A At any time.

23 "Q Were there any adjustments made in the basic
24 commission rate following the introduction of the surcharge?

25 "A I do not recall."

1 eoh

"Jacobi

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2 If your Honor please, that completes my offer
3 from the deposition of Mr. Jacobi.

4 THE COURT: Mr. Jackson.

5 MR. JACKSON: If your Honor pleases, I would
6 like to read, and may I be permitted to read, the question
7 and the answer as well as Mr. Sovel did?

8 THE COURT: Indeed.

9 MR. JACKSON: On page 32, line 7. There is an
10 error in the question, I believe.

11 MR. SOVEL: I will agree. You can restate that
12 as Mr. Jacobi.

13 MR. JACKSON: Thank you.

14 "Q Mr. Jacobi, when you started with Goodbody &
15 Co., approximately 1957, did you have a base salary?

16 "A If I remember correctly, I did start on a base
17 salary."

18 Then at page 38, line 20:

19 "Q During the period of time September 1, 1969 to
20 May 27, 1970, did your rate of compensation on executions
21 in listed securities change at all?

22 "A From September of 1969

23 "Q Yes.

24 "A Yes, it did.

25 "Q How so?

1 eoh

"Jacobi

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2 "A Commission schedules in -- were primarily
3 decreased insofar as what the salesman would receive or
4 the registered representative.

5 "Q In listed securities you said the compensation
6 rate was approximately 33.3 per cent in September 1969.

7 "A Right.

8 "Q Do you recall when that rate of compensation
9 was changed?

10 "A I believe that Goodbody has reduced them in
11 June of 1970, and that they made tickets -- commission
12 tickets of \$20 or above, they reduced it from approximately
13 one-third to 30 per cent.

14 If they were below \$20, to 15 per cent, on
15 listed securities.

16 "Q So, that was a reduction that went into effect
17 after you --

18 "A In this case, yes.

19 "Q (continuing) -- left the employment of Goodbody.
20 You testified that in unlisted securities the rate of
21 compensation in September 1969 was approximately 40 per cent;
22 is that right?

23 "A Right.

24 "Q Was there any change in that rate of compensa-
25 tion paid to registered representatives after September 1,

eoh

"Jacobi

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1969?

"A The Goodbody -- and I believe this was while I was still there and after September of 1969 -- decided to pay no commission on shares selling under \$2, regardless of size of the order.

"Q That was a per-unit price of \$2 or less?

"A \$2 per share, regardless of whether it was a hundred thousand shares or a hundred shares.

"Q And do you recall --

"A And I believe, also, that after that date the company said they would not pay commissions on over-the-counter trades under \$5 a share, unless the total order was a minimum of \$2000.

"Q Do you recall when that change went into effect?

"A I believe it was after September of 1969.

"Q Do you recall when it went into effect?

"A No, I do not.

"Q Was it prior to May 27, 1970?

"A Yes, very definitely."

That is all I wish to read, your Honor.

I wish to offer nothing further from Mr. Jacobi's deposition.

THE COURT: Anyone else?

You may proceed, Mr. Sovel.

PORTIONS OF DEPOSITION OF MR. ROBERT GAMBERA

206A

1 eoh.

* * *

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2 MR. SOVEL: If your Honor please, I now wish
3 to offer portions of the deposition of Mr. Robert Gambera.

4 If your Honor please, the deposition of Robert
5 Gambera was taken by defendant Harris, Upham & Company, Inc.,
6 on November 12, 1971, at the offices of Breed, Abbott &
7 Morgan. I will commence reading at page 5, line 1, which
8 indicates that the witness was duly sworn, examined by
9 Mr. McAllister as follows:

10 "Q Mr. Gambera, where do you presently reside?

11 "A In Citrus Heights, California.

12 "Q Is that located near Sacramento?

13 "A About twen miles from Sa ramento. .

14 "Q Where are you presently employed?

15 "A With Richard A. Harrison & Company in Sacramento.

16 "Q What is the business of Richard A. Harrison?

17 "A Member of the NASD dealing in securities, also
18 dealing in insurance, annuities, and so forth, brokerage,
19 stocks and bonds, and insurance.

20 "Q In what capacity are you employed by them?

21 "A As a registered representative.

22 "Q Are you still licensed by the New York Stock
23 Exchange?

24 "A My license is still valid, yes.

25 "Q When you use the term registered representative,

1	eoh	"Gambera	287
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2 are you still taking into account that license and utilizin
3 that license?

4 "A The New York Stock Exchange? They are not
5 members of the New York Stock Exchange.

6 "Q Just the NASD?

7 "A And also the Boston -- I have an application in
8 to be licensed by the Boston Stock Exchange.

9 "Q Are you licensed by the NASD at all?

10 "A Yes, as a registered representative."

10 "Q Do you have any documents with you regarding your
11 employment by Walston & Company, or Glore-Forgan, William R.
12 Staats, Inc.?

13 "A You mean in regards -- how do you mean?

14 "Q Do you have any documents with you relating
15 to your employment by either of those companies?

16 "A Relating to?

17 "Q Relating to your employment by them.

18 "A You mean the agreement I signed when I went there?

19 "Q If you have that, yes.

20 "A No, I have some instructional type memos.

21 "Q What do those relate to?

22 "A Unsecured debit balance, compensation schedule --

23 "Q To what does the unsecured debit balance memo
24 relate?

25 "A This is where they put out in the case of a

1 eowc 3

Gambera

2 client having a small debit balance in the account, like
3 ten, \$15, it is just the procedure as to how they would
4 handle this, the firm's policy as to how they would handle
5 this.

6 "Q And you said you had some documents from either
7 of those firms relating to compensation?

8 "A Well, yes, the commission schedule that they paid,
9 which they gave you at the time of coming to work there.

10 "Q Do you have one of those from Walston &
11 Company?

12 "A Yes.

13 "Q May I see that, please?

14 "A Sure, Actually I have three of them.

15 "Q May I see all three?

16 "A These were the three schedules."

17 MR. SOVEL: The record indicated that three
18 documents were produced, each consisting of a single sheet.

19 "Q Mr. Gambera, I am going to show you one of the
20 three sheets you have handed me, and I am going to ask you
21 if you will identify that particular document for the
22 record.

23 "A It is entitled 'Account Executive Straight
24 Compensation Schedule.'

25 "Q Is there a date on that document?

1 eowc 4

Gambera

2 "A Yes, there is. It is a 1967 form, P5B4-67.

3 "Q Which company issued this document?

4 "A This is Walston."

5 At that point the document was marked as Exhibit 1
6 of the deposition, which I will ask be marked as Exhibit 67
7 for the plaintiff in this case.

8 MR. JACKSON: Are you offering it in evidence?

9 MR. SOVEL: Yes, but I will offer all the documents
10 in evidence at one time.

11 (Plaintiffs' Exhibit 67 marked for identification.)

12 MR. SOVEL: Mr. Jackson, I am not offering it
13 yet. I will offer it when I offer all three.

14 MR. JACKSON: I am sorry.

15 MR. SOVEL: Resuming at page 27, line 7:

16 "Q Mr. Gambera, at the time this was in effect,
17 referring to Defendant Harris, Upham Exhibit 1 for
18 identification, were you employed by Walston?

19 "A Well, let's see--because they gave me all three
20 of them--

21 "Q When you started working for them?

22 "A Yes, right, when I started working for them.

23 "Now, these were the percentages that were in
24 effect, so these are accurate, while I was there.

25 "Now, Walston has another situation, which is a

1 eowc 5

Gambera

2 pension or profit-sharing plan, which is--well, if you
3 elect to go into the profit-sharing plan you get a little
4 more, or don't take out the two percent.

5 "They will pay you 32 percent on listed business
6 if you are not in the pension plan. If you do go into the
7 pension plan they will pay you 30 percent, which this says
8 30 here" --

9 And at that point another document was marked as
10 Exhibit 2.

11 THE COURT: Do you want that to be marked for
12 identification also?

13 MR. SOVEL: Yes, I think it should be, your Honor.
14 May I for convenience -- there were four exhibits marked --
15 and I would like to have the document that was marked as
16 Exhibit 2 marked as, I think it is, Exhibit 68, and the
17 one that was marked as Exhibit 3 be Exhibit 69 here, and
18 the one that was marked 4 be Exhibit 70 in this action.

19 THE COURT: Let us see if we can identify them
20 for the record. 68 for identification is that Account
21 Executive Straight Compensation Schedule for 1968?

22 MR. SOVEL: Yes, bearing the number at the bottom
23 P5B10-68.

24 THE COURT: All right. That will be 68 for
25 identification.

1 eowc 6

Gambera

2 (Plaintiffs' Exhibit 68 marked for identification.)

3 THE COURT: What is 69 for identification?

4 MR. SOVEL: 69 for identification is a document
5 entitled "Account Executive's Compensation Schedule," and
6 bears the number in the lower left-hand corner P-5-B10-68.

7 (Plaintiffs' Exhibit 69 marked for identification.)

8 THE COURT: What is 70 for identification?

9 MR. SOVEL: 70 for identification is a Walston &
10 Company, Inc., interoffice memorandum, dated April 3, 1970.

11 (Plaintiffs' Exhibit 70 marked for identification.)

12 MR. SOVEL: If your Honor please, at line 14 of
13 page 28 Mr. McAllister, who was examining the witness,
14 indicated, and I am quoting: "And for purposes of
15 clarification the prior answer of the witness referred to
16 Defendant's Exhibit 2 for identification" -- which is
17 Exhibit 68 for identification here.

18 At that point, if your Honor please, Exhibit 3 of
19 the deposition was marked, and that is the document that
20 bears Exhibit No. 69.

21 THE COURT: That is the Account Executive
22 Compensation Schedule with a 1968 date, 10-68 I think were
23 the last two numbers.

24 MR. SOVEL: Yes.

25 The next question appears at page 29, line 10:

1 eowc 7

Gambera

2 "Q Now, Mr. Gambera, you were about to refer to
3 Defendant Harris, Upham Exhibit 3 for identification?

4 "A Right, three of them all together. So, let's see.

5 "Exhibit 3 indicates an agency commission of 32
6 percent base rate, 40 percent principal, which indicates
7 the base rate for an agency transaction, and principal
8 transaction, and for mutual funds, approved funds, 46 and
9 two thirds percent, and unapproved mutual funds, 40 percent,
10 so this was the schedule that was in operation when I worked
11 for them.

12 "Now, if you went into the profit plan, you got
13 30 percent on the agency in lieu of 32 percent."

14 At that point I asked, "Is that all reflected on
15 Exhibit 3?", which would be Exhibit 69. The witness replied,
16 "Well, there are some changes between this one and this one"--
17 indicating the three documents--"which are all down in the
18 footnotes, and I'll have to start reading down in the
19 footnotes to find out."

20 At line 9:

21 "Q At the time that you commenced working in or about
22 August of 1969, Defendant Harris, Upham Exhibits 1, 2 and
23 3 for identification reflected the compensation which you
24 received during your period of employment at Walston &
25 Company; is that right?

1 ecwc 8 Gambera

2 "A Well, they are different, so --

3 "Q Well, let me ask you about the percentages
4 that you received--

5 "A The percentages on 3 are definitely the ones that
6 I worked on.

7 "Q I notice on Exhibit 3 that a bonus plan was in
8 effect. Did you ever receive any bonuses from Walston &
9 Company during your employment there?

10 "A No.

11 "Q In other words, for some reason or another you
12 never qualified to be a participant in the bonus plan?

13 "A I think that changed too, because it was never
14 actually clear to me, where the bonus breakoff was, because
15 she showed up to whatever figure, but I think it was changed
16 to 42,000.

17 "In other words, no one in the office could explain
18 it to me. I was given those three papers, and nobody seemed
19 to know where the changes were made, where the bonus break-
20 off was, why the changes were made at the time --

21 "Q At any rate, you yourself never received a bonus.

22 "A Right.

23 "Q After the surcharge was put into effect, which was
24 about April of 1970--

25 "A I never received any portion of the surcharge,

1 eowc 9

Gambera

2 and it was not applied against gross commissions, which
3 might have put you in a bracket where a bonus would have
4 been paid and applied."

5 Continuing at page 32, line 5, Mr. McAllister had
6 a document marked as Harris Upham Exhibit 4 for identification.
7 That is the document which has been marked as No. 70 here.

8 At line 15:

9 "Q Mr. Gambera, would you read the last paragraph
10 on the reverse side of Exhibit 4 at this time.

11 "A 'In accordance with a New York Stock Exchange
12 rule, we cannot give account executives credit for the
13 interim surcharge. However, they will receive credit to
14 their agency gross on the commission portion, including
15 all commissions under \$12.'

16 "Q Do you understand what that paragraph means?

17 "A Yes."

18 Continuing on page 50, line 23:

19 "Q After receiving Exhibit 4 did you make any
20 protest concerning the plan for allocation of commissions?

21 "A The manager, yes.

22 "Q What was his name/

23 "A Kenneth Rato.

24 "Q What did you say to him?

25 "A Basically I objected. I said we should share our

1 eowc 10

Gambera

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2 equal percentage in this surcharge.

3 "Q What did he say to you?

4 "A He doesn't make the decisions.

5 "Q Do you know what the basis of the complaint is
6 this action is?"

7 MR. SCHWARTZ: I object to that, your Honor.

8 THE COURT: I would sustain the objection.

9 MR. SOVEL: If your Honor please, it is only to
10 establish the reference of the following questions, to put
11 it in the proper context.

12 THE COURT: All right, I will allow it for that
13 purpose.

14 MR. SOVEL: (reading)

15 "A It is to establish the fact that this was a denial
16 of a commission to a broker that I feel he was entitled to.

17 "Q Is that denial of commission limited in respect
18 to the surcharge?"

19 MR. SCHWARTZ: Same objection, your Honor.

20 THE COURT: Mr. Sovel, I think it is a proper
21 objection.

22 MR. SOVEL: Let us go down to line 24, your
23 Honor.

24 THE COURT: You are going to withdraw that?

25 MR. SOVEL: Yes.

1 eowc 11

Gambera

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2 "Q Have you computed what damages if the plaintiffs'
3 complaint in this action should be upheld, and the requested
4 damages awarded resulting from your loss of commission?"

5 MR. JACKSON: If your Honor please, now I object
6 to the testimony, the answer to that question, not only
7 because the answer is couched in terms of an estimate and
8 the answer indicates that there has not been a complete and
9 accurate computation, but the balance of the testimony,
10 which Mr. Sovel apparently intends to read, shows that there
11 is no basis offered for the figure that is tossed off by
12 this plaintiff and that he did a little scratching around
13 on paper and then threw the papers away.

14 So I think that all of this line of testimony is
15 inadmissible, and I object to it.

16 THE COURT: I think it goes to weight in a case
17 where we are sitting nonjury. I am going to overrule the
18 objection and let him place this in evidence.

19 I must suggest to him that I place exceedingly
20 limited weight on this particular answer for just the
21 reasons which you have stated. I don't think it has
22 very much probative value.

23 MR. SOVEL: (reading)

24 "A I would estimate in the area of 1500 to 2000
25 dollars; I have not computed it to the penny.

1 eowc 12

Gambera

2 "Q Has that computation been based on sales
3 transaction confirmations, which Mr. Sovel has previously
4 agreed to pay on your behalf?"

5 If your Honor please, I believe that word was
6 "to supply on your behalf."

7 THE COURT: I have it written here as "supply,"
8 yes.

9 MR. SOVEL: (reading)

10 "A I took one month, just one month that I added up,
11 and took 30 percent of that and came up with a figure for
12 that month.

13 "So, pushing that out to a 14- or 15-month period--

14 "Q What month did you select?

15 "A I just took one month; I don't remember.

16 "Q Well, did you make any writings" --

17 I will conclude it there, your Honor.

18 THE COURT: I suggest, frankly, that what you have
19 just read, of course, underscores the objection that was
20 made. I would suggest that relative to that matter of
21 his damages the probative value of the testimony is
22 minimal.

23 MR. SOVEL: I agree, your Honor, on that, and of
24 course ultimately our claim is and the question of
25 calculation based on the figures that appear in the answers

1 eowc 13

Gambera

2 to interrogatories and the sales figures, but I felt it
3 important just for the record to show some damage on behalf
4 of the plaintiff. That is the only purpose for which these
5 depositions were read.

6 I would offer into evidence, your Honor, Exhibits
7 69 and 70, which were Exhibits 3 and 4 of the deposition.

8 THE COURT: The record is clear 69 is the Account
9 Executive Compensation Schedule and 70 is the Walston
10 Interoffice Memo.

11 Show them to counsel.

12 MR. JACKSON: No objection, your Honor.

13 THE COURT: Numbers 69 and 70 received. Thank you,
14 gentlemen.

15 (Plaintiffs' Exhibits 69 and 70 received in
16 evidence.)

17 MR. SCHWARTZ: May we borrow those to make copies?

18 THE COURT: Mr. Sovel, you can make copies or I
19 would appreciate your lending them.

20 MR. SOVEL: Certainly.

21 THE COURT: Mr. Jackson.

22 MR. JACKSON: At page 32, line 25, the bottom of
23 the page, just after Mr. Sovel stopped reading with
24 respect to the witness' understanding of the last paragraph
25 on the reverse side of Exhibit 4, which has been admitted

1 eowc 14

Gambera

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2 as Plaintiffs' Exhibit 70.

3 "Q Can you explain to me what it means?

4 "A Well, basically, due to a rule in the New York
5 Stock Exchange or a ruling--"

6 Then there is an observation by counsel, and the
7 witness proceeds:

8 "On gross under \$15 you would receive no
9 agency gross credit, you would get nothing, and they would
10 keep the whole \$15.

11 "Q What would you as a registered representative of
12 Walston & Co. receive credit for?

13 "A 30 percent or 32 percent of \$15.

14 "Q So you received some credit for a portion of the
15 surcharge?

16 "A No, I didn't receive that. I would have if they
17 paid me my 32 percent on the surcharge, I would have
18 received \$4.62, but as a result I did not receive that and
19 didn't receive any money.

20 "Q Well, you are confusing me now."

21 And then Mr. Sovel intervenes and says:

22 "What he is saying is that they received no
23 commission on the surcharge, but they were receiving their
24 full commission, 32 percent, on the basic commission."

25 "Mr. McAllister: Excluding the surcharge?